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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1291

GEORGE EDWARD FRED,
Petitioner,

VERSUS

STATE OF OKLAHOMA and LARRY DERRYBERRY, as Attorney General of the State of Oklahoma,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

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The petitioner, GEORGE EDWARD FRED, prays that a writ of certiorari issue to review the opinion and judgment of the Court of Criminal Appeals of the State of Oklahoma rendered in these proceedings on January 8, 1975.

OPINIONS BELOW

The opinion of the Court of Criminal Appeals, as yet unpublished in the National Reporter System, appears at Volume 46, Oklahoma Bar Association Journal No. 3 at page 74 and at Appendix A, and exhibits attached thereto, *infra*, pp. i-xl.

Petition for rehearing, timely filed, was denied by the Court of Criminal Appeals on the 18th day of February,

1975. The order denying petition for rehearing appears at Appendix B, *infra*, pp. xl-xli.

JURISDICTION

The judgment of the Court of Criminal Appeals of the State of Oklahoma was entered on the 8th day of January, 1975. See Appendix A, p. i, *infra*. The order of the Court of Criminal Appeals denying petition for rehearing was entered February 18, 1975. See Appendix B, p. xli, *infra*. This petition for certiorari was filed less than 90 days from the dates aforesaid.

The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (3).

QUESTIONS PRESENTED

Petitioner was picked up at about 11:30 a.m., February 12, 1973, by officers investigating the disappearance of Edna Shaw. Defendant was held until February 15, 1973, when a murder charge was filed against him; and he was then transferred to a mental hospital for examination.

Defendant's conviction was obtained by the use of statements against interest taken during defendant's detention on the 12th and 13th days of February, 1973. Defendant, who was then twenty (20) years of age, was a Venezuelan National, not a citizen of the United States. Defendant complains that during this time he was held incommunicado, without counsel, sick from heroin withdrawal, held for an unreasonable time without charge, and prior to making the last and most incriminating statement was administered an unusually high dosage of the tranquilizer, valium.

The questions thus presented are:

A. Were defendant's statements involuntary and thus inadmissible against him in violation of the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution?

B. Were defendant's purported waivers of his constitutional rights to counsel as required by *Miranda* v. *Arizona*, 384 U.S. 436, given voluntarily and intelligently, or were the "waivers" obtained under such circumstances as to render his waiver of his Sixth Amendment right to counsel and Fourteenth Amendment right to silence involuntary?

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, with-

out due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF CASE

The following statement of the case contains references to page numbers of transcripts of three (3) separate hearings: the preliminary hearing, the hearing on defendant's motion to suppress and motion to quash and the jury trial transcript. Abbreviations, such as "PH. 20" refer to the page number of the preliminary hearing transcript; abbreviations, such as "Tr. 46" refer to page numbers of the trial transcript; and abbreviations, such as "M. 35" refer to page numbers of the motion hearing.

On February 2, 1973, Edna Shaw disappeared from her home in Chickasha, Oklahoma. On the following morning, February 3, 1973, an investigation was begun into her disappearance.

On Monday, February 12, 1973, at 11:30 a.m., the petitioner, George Edward Fred, was taken into custody at his place of employment at Lawrence Machine and Trailer Shop in Chickasha, Oklahoma, by two Chickasha Police Officers, one State Crime Bureau Agent and the Sheriff of Grady County, Oklahoma (PH. 95 and 109). The petitioner, George Edward Fred, was born February 4, 1953, had turned 20 years of age only two days after the disappearance of Mrs. Shaw (PH. 110) and is a Venezuelan National, not a citizen of the United States (PH. 210). Petitioner was placed in an automobile with the four officers, who advised him that they were investigating the disappearance and possible death of Mrs. Shaw (PH. 109). Petitioner was advised of his constitutional rights and at 11:32 a.m. signed a waiver of his rights (PH. 110), which was introduced at preliminary hearing as State's Exhibit 45 and at trial as State's Exhibit 30. The officers talked to the petitioner approximately one hour and petitioner was then taken by the four officers to Alexander's Restaurant in Chickasha, where he had a cup of coffee and where at 12:40 p.m., petitioner was again advised of his rights and asked to sign a consent to search his home and his automobile, which said consent was later introduced as State's Exhibit 45 at the preliminary hearing and State's Exhibit 31 at the trial (PH. 75).

At 12:50 p.m., on February 12, 1973, petitioner was taken to the Chickasha Police Department where he was

fingerprinted and photographed (PH. 97, 98 and 99), petitioner was taken then to his home where at 1:35 p.m. a search was conducted (PH. 80, 99, 117 and 118). The officers then took petitioner from his home about 1:50 p.m. and returned to the place of his employment where at 2:00 p.m. a search was conducted of petitioner's automobile (PH. 84, 101, 118 and 119).

Petitioner was then taken by the same officers to the offices of the Oklahoma State Bureau of Investigation in Oklahoma City where they arrived at 2:55 p.m. for the purpose of administering a polygraph examination (PH. 103, 119 and 120). The polygraph examiner reviewed the questions to be asked of the petitioner and during this interview the petitioner gave him a statement indicating that he and another person had conspired to steal a television set from Edna Shaw and that petitioner transported the other party to her residence the night she disappeared, but denied any knowledge of her actual disappearance or death (PH. 122). This statement was taken just after 3:15 p.m., on February 12, 1973, in the presence of two Crime Bureau Agents (PH. 151). Petitioner was interrogated until 5:55 p.m., at which time he was returned to Chickasha. Returning to Chickasha, the officers stopped at petitioner's place of employment where one of them entered petitioner's car and drove it to the Sheriff's office where they arrived at 7:15 p.m. (PH. 152, 153).

At 7:22 p.m., at the Sheriff's office, the petitioner signed a waiver of constitutional rights, which was later introduced into evidence at the preliminary hearing as State's Exhibit 47 and at trial as State's Exhibit 33 (PH. 200). At 7:25 p.m., at the Sheriff's office and in the presence of City

Detectives, a Crime Bureau Agent and the District Attorney's investigator, a statement was taken from the petitioner reducing to writing essentially the same statement made earlier at the offices of the Crime Bureau (PH. 154, 198). The written statement introduced at preliminary hearing as State's Exhibit 48 and at trial as State's Exhibit 34 was completed at 11:02 p.m. (PH. 211). Petitioner was then taken by the officers to a cafe near the Courthouse where he was given a cup of coffee and was then taken to a cell in the County Jail about midnight of February 12, 1973 (M. 34). Petitioner was booked into the County Jail on February 12, 1973, and has been held continuously since that time (M. 12). No charge was specified on the jail records when he was booked in (M. 22 and 52).

While in his cell, during the night of February 12, 1973, the petitioner attempted to take his life and at 7:00 a.m., February 13, 1973, the petitioner was discovered unconscious in his cell (PH. 134, 136 and 212). Petitioner was taken to the hospital at 8:15 a.m., then returned to jail (M. 26 and 191).

At 2:15 p.m., on February 13, 1973, petitioner was brought from his cell to the Sheriff's office to discuss the matter further. Petitioner, at that time, advised the officers that he was suffering from heroin withdrawal symptoms. Petitioner was depressed and was crying (PH. 134, 136 and 212). A doctor was called to the Sheriff's office and there examined the petitioner at approximately 3:00 or 3:10 p.m. (PH. 163 and 213). The doctor prescribed forty (40) 10 milligram valium tablets to be taken by the petitioner, two tablets each three hours (M. 64(a)) petitioner's Exhibit 4 (PH. 222). At 3:40 p.m., petitioner was given two 10 milli-

gram tablets of valium (PH. 164 and 213). At 4:15 p.m., after taking the valium and after calming down, petitioner signed a waiver of his rights agreeing to show the officers the location of the body of Edna Shaw (PH. 164, 165 and 215). This waiver was introduced in preliminary hearing as State's Exhibit 50 and at trial as State's Exhibit 36. At 4:22 p.m., the petitioner was taken with three officers in one car with three other cars following and directed the officers to the location of the body (PH. 221). The party arrived at the location of the body at 5:45 p.m., February 13, 1973. Petitioner told the officers on the way the valium was holding him together. He indicated that he was a heroin addict and again that he had attempted suicide in his cell the previous evening (PH. 224). They left the body at 6:10 p.m. and petitioner took two more of the 10 milligram valium tablets shortly after 6:00 p.m. (PH. 229). Petitioner was then taken to a restaurant to eat at about 7:00 p.m. (PH. 225) and was returned to the Sheriff's office at 7:50 p.m. (PH. 137, 169 and 227). Upon arrival at the Sheriff's office, petitioner again signed a waiver of rights, which was introduced into the preliminary hearing as State's Exhibit 51 (PH. 137, 169 and 228) and as State's Exhibit 37 at the trial. At 7:53 p.m., on February 13, 1973, petitioner gave officers a written statement admitting that he was present at Edna Shaw's home when she was killed by a man named Andy Sites and also admitting that he traveled with Sites to dispose of the body (PH. 23). This statement was introduced at preliminary hearing as State's Exhibit 52 and at trial as State's Exhibit 38. In this last statement, petitioner also advised the officers that he had cleaned his car trunk out and had thrown items out at Boggy Creek when return-

ing from disposing of the body (PH. 234). Officers using this information recovered a number of items at Boggy Creek, which were later introduced at preliminary hearing and at trial.

No further interrogation was conducted by the officers and the petitioner was returned to his cell at approximately 10:30 p.m., on the 13th.

On February 15, 1973, two days later, a charge of murder was filed against petitioner (M. 5). The petitioner was then taken before a magistrate and advised of the charge against him and then on application of the State transported to Central State Hospital at Norman, Oklahoma, for evaluation. No arrest warrant nor search warrants were issued (M. 6).

Preliminary hearing was conducted in District Court, Grady County, on the murder charge beginning June 5, 1973, and petitioner was bound over for trial.

After preliminary hearing, petitioner filed a motion to suppress the signed waivers and written statements taken on February 12 and 13, 1973, and to suppress the items found at Boggy Creek, as well as the location of the body, the identity of the same and the fact of death of the deceased for the reason that such evidence was obtained in violation of the petitioner's constitutional rights.

The petitioner also filed a motion to quash the information filed in the case for the reason there was insufficient admissible evidence against the petitioner to justify holding him for trial.

All of the petitioner's motions were overruled, except as to the search of petitioner's automobile, without a warrant conducted on February 14, 1973.

Petitioner was tried on the murder charge beginning on October 29, 1973, and convicted by a jury of first degree manslaughter and sentenced to a term of 35 years in the custody of the Department of Corrections.

The questions presented by this petition were first presented to the trial court by motion to suppress the evidence unlawfully obtained, filed September 27, 1973, and by motion to quash the information, filed October 2, 1973. These two motions were presented at a pre-trial motion hearing conducted October 17 and 24, 1973. On the 29th and 30th days of October, 1973, the trial court overruled petitioner's motion to suppress and motion to quash. The motions and the court's ruling thereon are contained at Appedix C, p. xli, *infra*.

The questions presented by this petition were again presented to the trial court by objection when the State of Oklahoma offered witnesses to testify as to statements made by the petitioner at which time a "Jackson-Deno" type hearing was conducted out of the presence of the jury. The transcript of the Jackson-Deno hearing appears beginning at page 170 of the trial transcript through page 212 of the transcript, and the court's ruling on the Jackson-Deno hearing appears at page 212 through page 237 of the trial transcript. The pertinent portion of the court's ruling, overruling petitioner's objection to the admissibility of the statements in question is found at Appendix D, p. liii, *infra*.

The statements made by the petitioner were thereafter introduced into evidence at the trial of the cause, over petitioner's objection, with the result that petitioner was convicted of the crime of manslaughter first degree.

Thereafter, the questions raised in this petition were again presented to the trial court by a motion for new trial, which was overruled by the trial court on November 21, 1973, and petitioner was sentenced to a term of 35 years imprisonment for the crime of manslaughter first degree.

A timely appeal was prosecuted to the Court of Criminal Appeals of the State of Oklahoma, by petition in error, where the constitutional questions were again raised. The petition in error appears at Appendix E, pp. lxix-lxxi, *infra*.

The Court of Criminal Appeals affirmed petitioner's conviction and denied rehearing as stated in the jurisdictional statement.

REASONS FOR GRANTING THE WRIT

STATEMENTS ATTRIBUTABLE TO DEFENDANT ON THE 12TH AND 13TH DAYS OF FEBRUARY, 1973, ARE INADMISSIBLE FOR THE REASON THAT THE MIRANDA WAIVERS, AS WELL AS THE STATEMENTS THEMSELVES, WERE OBTAINED UNDER CONDITIONS INHERENTLY COERCIVE IN NATURE AND IN VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS.

The petitioner herein referred to as defendant, respectfully urges that when this Court examines the totality of circumstances surrounding the giving of the waivers and statements, it will become apparent that the statements are the product of psychological coercion. In considering the admissibility of the statements in question, the following

factors should be considered. The defendant was inexperienced, barely 20 years of age and an alien, not a citizen of the United States, he was unlawfully arrested at 11:30 a.m., on Monday, February 12, 1973, and unlawfully detained with no charges being filed until Thursday, February 15, 1973. The statements were obtained during his detention and while he was held incommunicado without counsel and while he was suffering the effects of withdrawal from heroin. The statements most damaging to the defendant were obtained on February 13, only after administration of the drug valium.

Under all of these circumstances, the defendant asserted in the trial court that the statements themselves were inadmissible for the reason that they were taken in an inherently coercive atmosphere and involuntary and moreover that under the circumstances, defendant could not have knowingly and intelligently waived his rights to silence and to counsel as required by *Miranda* v. *Arizona* hereinafter discussed.

The following argument and authorities are submitted in support of the inadmissibility of the statements in view of the various factors rendering the statements inadmissible:

A. DEFENDANT'S ARREST WAS ILLEGAL.

At the preliminary hearing, Detective Wheeler testified that when defendant was picked up at 11:30 a.m., on February 12, he, Detective Wheeler, did not place defendant under arrest as such, but that he was not free to go from that time forward and that he was taken at 12:50 p.m., the same date, to the Chickasha Police Department where he

was mugged and printed (PH. 97 and 99). OSBI Agent, Lovett, testified that defendant was not in custody but with the officers voluntarily up until he gave written statements at 7:25 p.m., on the 12th, even though the same statement was given at 3:15 p.m., the same date (PH. 175 and 176). Agent Lovett, however, at the trial of the case apparently realizing that defense counsel was attempting to show the defendant was actually in custody, then insisted that defendant, though a suspect, was free to go even after giving the statement at 7:25 p.m., on the 12th (Tr. 361 through 367). OSBI Agent, Brady, testified at trial that the defendant was in custody when brought to the OSBI Office in Oklahoma City for interrogation at 3:15 p.m., on the 12th (Tr. 299); and District Attorney's investigator, Turner, testified at trial that defendant was in custody from the first time he met him (Tr. 600), which was about 7:22 p.m., February 12, 1973.

As indicated earlier in Detective Wheeler's testimony at preliminary hearing, the testimony of Agent Lovett at trial and throughout the proceedings, the officers at the time they picked up the defendant did not have probable cause to make an arrest. The only information they had was that the defendant had been seen on the night Mrs. Shaw disappeared with a television set in his automobile and they were aware that defendant had lived in an apartment adjoining that of Mrs. Shaw (Tr. 361) (PH. 97 and 99).

Arrest is defined by the Statutes of the State of Oklahoma at 22 O.S., Section 186 (Okla. Stat. 1971) as:

> "Arrest is the taking of a person into custody, that he may be held to answer for a public offense."

22 O.S., Section 190 (Okla. Stat. 1971), provides:

> "An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer."

In *Henry* v. *State*, 494 P.2d 661 (Okla. Cr. 1972), our Court stated:

> " 'arrest is the taking of a person into custody.' 22 O.S. 1971, Section 186. 'No particular form of words is necessary to constitute an arrest.' Heinzman v. State, 45 Okl. Cr. 305, 308, 283 Pac. 264, 265 (1929). It is apparent that 'whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person.' Terry v. Ohio, 392 U.S. 1, 16, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889 (1968)."

This Court has also stated that where the person arrested is deprived of his freedom, placed in a police car, submits to the officer's request to go to the police department, he is deprived of his freedom and substantially "in custody" and the arrest is complete though the officer testifies that they did not formally place him under arrest. *Battles* v. *State*, Okla. Cr., 459 P.2d 623 (1969).

Our Statutes provide that an officer may without a warrant arrest a person when a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it. 22 O.S., Section 196 (Okla. Stat. 1971). The officer must, however, have probable cause or reasonable cause to believe the defendant has committed the offense and mere suspicion will not justify the arrest. Such an arrest is illegal. *Rainbolt* v. *State*, 97 Okla. Cr. 164. 260 P.2d 426 (1953).

The United States Supreme Court has held that the United States Constitution Fourth Amendment guaranty against unreasonable searches and seizures applies to seizures of the person as well as of property and while the Fourth Amendment does not prohibit arrest without a warrant, it does require probable cause. *Giordenello* v. *United States*, 357 U.S. 480 (1958).

The statements taken from the defendant were obtained as the result of an unlawful arrest of the defendant and are, therefore, inadmissible. *Application of Fowler*, Okla. Cr., 356 P.2d 770 (1960).

It may be argued that the defendant had not been arrested. However, the question of arrest or detention cannot be distinguished from the standpoint of the admissibility of the evidence obtained as a result of the detention. Not only does an unlawful arrest violate the United States Constitution, but mere detention does. The United States Supreme Court has held in *Davis* v. *State of Mississippi*, 394 U.S. 721 (1969), that the Fourth Amendment is meant to prevent wholesale intrusion upon the personal security of our citizenry, whether these intrusions are termed arrest or investigatory detention. Detentions for the sole purpose of obtaining fingerprints are subject to the constraints of the Fourth Amendment. In this case, the Court reversed the conviction of the defendant, who had gone voluntarily with the officers for the sole purpose of obtaining fingerprints to be used in their later investigation. The defendant was detained for only a matter of a short time, was released and thereafter arrested when the fingerprints implicated him in the commission of a crime. The Fourth Amendment protection, of course, has been made applicable to the states

through the Fourteenth Amendment of the United States Constitution. *Mapp* v. *Ohio*, 367 U.S. 643 (1961).

The United States Supreme Court has held in *Upshaw* v. *U. S.*, 335 U.S. 410, that delay in and of itself results in a confession's inadmissibility under the Federal rules requiring that a defendant be transported without delay to a U. S. Commissioner. The Court of Criminal Appeals has rejected this application of 22 O.S., Section 181 (Okla. Stat. 1971), requiring that the defendant be taken before a magistrate without delay. See *Application of Fowler*, 356 P.2d 770 (Okla. Cr. 1960). In that case, the Court indicated that each case must stand on its own merits; however, defendant contends that the holding of the United States Supreme Court in *Davis* v. *Mississippi* would compel exclusion of evidence obtained by reason of the detention of the defendant in the instant case.

B. THE DEFENDANT HELD INCOMMUNICADO WITHOUT COUNSEL.

The defendant was held incommunicado and without counsel undergoing interrogation at various times over a period of thirty-five (35) hours and then after interrogation had ceased, was not taken before a magistrate for another thirty-six (36) to forty (40) hours.

The United States Supreme Court in *Malloy* v. *Hogan*, 378 U.S. 1 (1964), held that the United States Constitution's Fifth Amendment exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the states. The Court further held in *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), that an individual who is subjected to custodial police interrogation

must be accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.

Miranda v. *Arizona*, 384 U.S. 436 held, as follows:

> "The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicated in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."

Agent Brady testified at the trial that he gave *Miranda* warnings to the defendant prior to his statement at 3:15 p.m., February 12, at the offices of the Crime Bureau in Oklahoma City. He stated at the *Jackson-Deno* hearing that there was no mention to the defendant in regard to taking a statement to be used as evidence in court against him. The trial court, in fact, in ruling on the *Jackson-Deno* hearing excluded the major portion of the statement given to Brady and Lovett at the Crime Bureau offices because the defendant was so emotionally distressed that Brady felt a polygraph examination would be unreliable (*Jackson-Deno* hearing trial 173 through 238 at pages 200 through 204 and 235 through 236).

This same statement was later reduced to writing (PH. 131, 132 and 154) and admitted into evidence at trial over defendant's objection as State's Exhibit 34. Defendant's total circumstances were no different at 7:25 p.m., on February 12, than they had been at 3:15 p.m., that same afternoon, except that the defendant had been continually, in the presence of the officers, subject to interrogation for a greater period of time. If the defendant's statement given at the Crime Bureau offices was inadmissible, the same statement, reduced to writing that evening would be on no better ground. As the United States Supreme Court held in *Beecher* v. *Alabama*, 408 U.S. 234:

> "There was no break in the stream of events, *Clewis* v. *State of Texas*, 386 U.S. 707, 710, 87 S.Ct. 1338, 1340, 18 L.Ed.2d 423, for he was still in pain, under the influence of drugs and at the complete mercy of the prison hospital authorities."

In a prior consideration of *Beecher*, the U. S. Supreme Court held:

> "That his written confession five days later, while in custody and under the influence of morphine, were part of the 'stream of events' and infected with 'gross coercion.'" *Beecher* v. *Alabama*, 389 U.S. 35, 38.

The Supreme Court in *Miranda* further held that:

> "Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights."

C. DEFENDANT'S PHYSICAL AND MENTAL CONDITION IN CUSTODY RENDERS STATEMENTS INVOLUNTARY.

The defendant testified at a hearing on his motion to suppress that he had been using heroin and was suffering from withdrawal while in the custody of the officers on February 12 and 13, 1973, when the statements were taken (M. 68 through 81). The officers testified that the defendant told them on February 13, 1973, at 2:15 p.m., upon being brought from his jail cell to the Sheriff's office for further interrogation that he was suffering withdrawal and that he had attempted suicide twice the night before. The officers testified that he seemed depressed, was crying, was disturbed and shaking (PH. 134, 157, 161, 162, 213 and 214). By the time the defendant was brought from his cell to the Sheriff's office on that date, he was so disturbed that the officers called a doctor to examine him. As indicated earlier in the brief, the doctor prescribed valium tablets and at 3:40 p.m. two 10 milligram tablets were administered to

the defendant. The officers testified that after defendant took the 20 milligrams of valium at 3:40 p.m., he calmed down (PH. 165 and 255). It was at 4:15 p.m., on the 13th day of February, and only after being administered the 20 milligrams of valium that the defendant signed the statement advising that he would show the officers where the body of Edna Shaw was (State's Exhibit 50 at preliminary hearing and State's Exhibit 36 at trial). The defendant then in fact led the officers to the body. It was only after being administered a second 20 milligrams of valium at 6:10 p.m. that he gave the statement to the officers admitting his involvement in the death of Edna Shaw (State's Exhibit 52 at preliminary hearing and trial Exhibit 38).

The defendant contends that the accumulation of factors surrounding the taking of the statements from the defendant, his arrest, delay in arraignment, detention, incommunicado interrogation, his mental and physical condition finally crowned by the administration of a central nervous system depressant "relaxed" defendant into the penitentiary.

In *Miranda* v. *Arizona*, the Court stated:

> "As we have stated before, 'since Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.'" *Blackburn* v. *Alabama*, 361 U.S. 199, 206, 4 L.Ed.2d 242, 247, 80 S.Ct. 274 (1960).

In *Malloy* v. *Hogan*, 378 U.S. 1 (1964), the United States Supreme Court held that the United States Constitution Fifth Amendment exception from compulsory self-

incrimination is applicable through the Fourteenth Amendment to the states.

In *Townsend* v. *Sain*, 372 U.S. 293, the Court held that the standard governing the admissibility of confessions into evidence is whether an individual's "will was overborne" or if his confession was not "the product of a rational intellect and of free will." Citing *Reck* v. *Pate*, 367 U.S. 433, and *Blackburn* v. *Alabama*, above cited. Thus holding that the standards governing admissibility of drug induced confessions is the same as in other cases. Other cases involving drug induced confessions are *Jackson* v. *Deno*, 378 U.S. 368, and *Beecher* v. *Alabama*, 408 U.S. 234.

In *Reck* v. *Pate*, 367 U.S. 433, the Court stated that in resolving the issue of the admissibility of the confession, all of the circumstances attendant upon the confession must be taken into account. Citing *Fikes* v. *State of Alabama*, 352 U.S. 191, and other cases. The Court went on to say that physical mistreatment is one circumstance to be considered and other circumstances may combine to produce an effect as impellingly coercive as the deliberate use of the third degree. The totality of circumstances surrounding the defendant's confession must, therefore, be considered by the Court. In the *Reck* case, the Court concluded that the total combination of circumstances was so inherently coercive that its very existence was irreconcilable with the possession of mental freedom by a lone suspect.

The administration to the defendant in the instant cause of the drug valium is but one of the circumstances surrounding his detention; however, defendant contends that the administration of the drug seriously affected his ability to resist interrogation and precipitated the state-

ments implicating the defendant in the death of the deceased.

As noted earlier in this brief, the officers interrogating the defendant testified that the administration of the drug valium had an effect on the defendant; that he calmed down after the drug was administered. Dr. Thomas Whitsett, an M.D. on the faculty of the University of Oklahoma College of Medicine, specializing in internal medicine and pharmacology, testified at the hearing on defendant's motion to suppress beginning at page 113. At page 116, the doctor testified that the onset of withdrawal symptoms begins about 6 to 8 hours after the last dose of the drug and by 12 to 16 hours is quite manifest. He further testified that the use of valium, a tranquilizer, was not a valid treatment for withdrawal symptoms; however, that the drug would ameliorate some of the symptoms such as muscle cramping, agitation and anxiety (M. 120). The doctor testified that valium was used for treating anxiety, fear and agitation or in large doses, intravenously, for putting persons to sleep (M. 121). The doctor also testified that studies showed that individuals administered lower doses of valium than the defendant was given would lose interest, their intellectual faculties were impaired and their insight into a given situation was impaired and that they became more cooperative (M. 122). The doctor testified that clinically valium was used so that physicians could conduct physiotherapy with their patients and allow the individual to talk about their underlying problems (M. 126). The testimony of the doctor reveals that one suffering from heroin withdrawal is concerned only with obtaining drugs to alleviate his condition and under such circumstances his will would be easily

overborne. The use of valium would not prevent that situation from occurring, but would simply relieve his anxiety and fear.

In response to hypothetical questions based upon the defendant's in custody interrogation, the doctor indicated that after 7:25 p.m., February 12, the defendant's will would have been overborne and the statements taken would not be the product of a rational intellect. Moreover, the doctor indicated that defendant's ability to knowingly, intelligently and voluntarily waive his rights under *Miranda* would be impaired (M. 135 and 136). The doctor further indicated that even if the defendant were not suffering from heroin withdrawal the administration of 20 milligrams of valium at 3:40 p.m., on February 13, would impair the defendant's intellect that he would be more cooperative with the officers, less fearful of his situation, suffering no anxiety and perhaps indifferent to the consequences of his confession.

To say that a person's will is not overborne in such situation, is questionable. One need only to place himself in the defendant's position and ask, "if I were in the custody of the officers, over this period of time, resolved not to implicate myself in the commission of a crime, would I want to have administered to me, a drug capable of alleviating my fear, lessening my resolve, making me more cooperative and less concerned about the consequences of confessing."

If any one of the statements, introduced into evidence against the defendant, were involuntary, the error in admitting the statements into the evidence would require re-

versal of the conviction. In *Jackson* v. *Deno*, 378 U.S. 368, the Court held:

> "It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961), and even though there is ample evidence aside from the confession to support the conviction."

Defendant's rights under the Fourth and Fifth Amendments to the United States Constitution are also protected by Article 2, Sections 21 and 30 of the Constitution of the State of Oklahoma. The exclusionary rule holding illegally obtained evidence inadmissible is followed in Oklahoma. *Harrell* v. *State*, 379 P.2d 706 (Okla. Cr. 1963).

Copies of the statement of February 12, 1973, taken at 7:25 p.m., State's Exhibit 34, and the statement taken February 13, 1973, at 7:53 p.m., State's Exhibit 38 are reproduced in Appendix "A," *infra*, pages xxiii-xl.

EVIDENCE DERIVED AS A RESULT OF AN UNREASONABLE SEARCH AND SEIZURE OR DISCOVERED BY THE USE OF INVOLUNTARY CONFESSIONS ARE INADMISSIBLE.

The Court has held that a consent to search, either written or oral, given by a defendant while in custody must be preceded by a complete and proper *Miranda* warning. *Schorr* v. *State*, Okla. Cr., 499 P.2d 450 (1972), defendant contends that the *Miranda* warnings were invalid for the reasons previously discussed in this brief, that defendant

was in no condition to "knowingly," "intelligently" and "voluntarily" waive his rights under the *Miranda* decision. The search of defendant's home and automobile was, therefore, illegal and the fruits of those searches inadmissible in evidence against the defendant. State's Exhibits 46, 47, 48 and 49 were obtained as a result of these searches and introduced by motion to suppress and at the *Jackson-Deno* hearing. Evidence so obtained through violation of the defendant's United States Constitution Fourth Amendment guaranty against unreasonable searches and seizures is inadmissible in a state criminal trial. *Mapp* v. *Ohio*, 367 U.S. 643 (1961).

In defendant's motion to suppress, at *Jackson-Deno* hearing and at trial, defendant sought to exclude the fact of death of the deceased and identification of the body of the deceased, as well as the evidence discovered at Boggy Creek for the reason that these items of evidence were discovered solely through the lips of the defendant. The officers testified at the trial that it was only after the defendant was administered the drug valium at 3:40 p.m., February 13, that he advised them of the location of the body and led them to it. It was only after the administration of a second 20 milligrams of valium that the defendant advised them of the location of the items at Boggy Creek. These items of evidence were discovered by no other means, other than through the use of the confessions or statements of the defendant (Tr. 600, *et seq.*).

Evidence derived through the use of an involuntary confession stand upon the same footing as evidence derived by means of an involuntary search and seizure, *Wong Sun*

v. *U. S.*, 371 U.S. 471 (1963). The confessions or statements of the defendant being inadmissible any evidence obtained by reason of the use by the officers of the statements is likewise inadmissible. The trial court should have sustained defendant's motion to suppress and excluded these items from consideration by the jury when defendant objected at the time of trial.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Criminal Appeals of the State of Oklahoma.

Respectfully submitted,

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April, 1975

APPENDIX "A"

FILED
In Court of Criminal Appeals
of the State of Oklahoma
JAN 8 1975
Ross N. Lillard, Jr., Clerk

FOR PUBLICATION

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

GEORGE EDWARD FRED,	)	
	)	
Appellant,	)	
-vs-	)	No. F-74-263
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

- O P I N I O N -

BUSSEY, JUDGE:

In the District Court, Grady County, Case No. CRF-73-16, appellant, George Edward Fred, hereinafter referred to as defendant, was charged and tried for the offense of Murder. He was convicted by a jury for the lesser included offense of Manslaughter in the First Degree, in violation of 21 O.S. 1971, § 711. His punishment was fixed at thirty-five (35) years imprisonment, and from said judgment and sentence he has perfected a timely appeal to this Court.

At trial, James L. Lewis testified to the following facts. He rented a sleeping room at 1209 Colorado, Chickasha, Oklahoma, from the deceased, Mrs. Edna Shaw, and had boarded there for a period of two or three weeks until the disappearance and death of Mrs. Shaw on February 2, 1973. On February 2nd, he had returned home from work around

6:30 or 7:00 p.m. and ate dinner with Edna Shaw between 7:30 and 8:00 p.m. He left the apartment around 8:15 or 8:30 to go visit a friend, Kathryn Defur. The front door of the apartment did not lock from the inside and he had padlocked the door from the outside and had taken the key with him in order not to awaken Mrs. Shaw when he returned. He returned to the residence around 10:30 p.m., unlocked the padlock and upon entering, noticed that the television and Mrs. Shaw were gone. The television normally sat beside the front door of the apartment. Lewis paid no attention to the fact that the TV and Mrs. Shaw were gone, and went to bed. He was awakened around 5:00 the next morning by the phone ringing. He answered the phone and the call was for Mrs. Shaw, and he stated that Mrs. Shaw was not there. He then went to the kitchen and made himself a cup of coffee and noticed something unusual on the floor in the kitchen, but thought it was mud. Approximately 15 minutes later Mrs. Shaw's employer called and Lewis told the employer that Mrs. Shaw was not there, hung up the phone, and returned to the kitchen and made another cup of coffee. When he went to the ice box to get lunch meat in order to make himself a sandwich, he discovered Mrs. Shaw's eyeglasses laying upside down in front of the ice box. Because it was dark in the kitchen, he used his cigarette lighter to look closer and discovered what he had thought to be mud was in fact blood. The blood was all over the floor and covered some paper sack and "stuff" in the corner. He then called Mrs. Shaw's employer to get the phone number of Mrs. Shaw's sister, whom he next called concerning the whereabouts of Edna Shaw. The sister informed Lewis that Edna was not there, so Lewis decided he should call the police, which he did.

Lewis testified that Edna Shaw was a tall, rather big-boned, heavy-set woman with gray hair and was approximately 65 years of age. He stated that she had a distinctive gap between her two top front teeth. He further testified that Edna Shaw's television was a large, brown console type

color set (24 inch screen) with eight inch legs. It was his further testimony that defendant, George Edward Fred, had rented the apartment next to Mrs. Shaw, but that he had moved out one week or ten days before February 2, 1973, and that defendant had, on one occasion, eaten dinner with Lewis and Edna Shaw.

Kathryn Defur testified that on the night in question, February 2, 1973, that James L. Lewis came to her home around 8:00 p.m. and stayed until 10:15 p.m.

May Fine, sister of deceased Edna Shaw, testified that Edna was approximately five feet, six and one-half inches or five feet, seven inches tall, and weighed approximately 135 to 140 pounds, and had gray hair; that Edna suffered arthritic pain in her neck, knees, shoulders and legs, and that she had once suffered a broken shoulder. She further stated that Edna Shaw had a wide space between her two top front teeth.

On the night in question, May Fine talked to her sister Edna on the phone several times and the last contact she had was around 9:20 p.m. when Edna called her and told her, in a low whispering voice, to call her back in five minutes. During this conversation she had heard Edna's television in the background. May Fine failed to return the call to Edna, but related the conversation she had had with James Lewis when Mr. Lewis called concerning Edna's whereabouts.

Georgene Carmen Walker testified that on February 2, 1973, she resided at 1209 Colorado in Chickasha, Oklahoma, in an apartment directly above Edna Shaw, and on that night, at approximately 9:00 p.m., she heard a man's voice and Edna's voice, talking loudly and Edna was using obscene language. Approximately 10 or 15 minutes later, she heard doors slamming downstairs, then something heavy being dragged, and a car motor running beneath the bedroom window which is by Mrs. Shaw's living room.

Thomas Dillard Walker, husband of witness Georgene Carmen Walker, testified that on the night in question the only sounds he heard were the slamming of the door and something like the moving of furniture; however, on cross-examination he stated that he had a hearing problem.

Louise Jones testified that on February 2, 1973, she was working at the Green Parrot Tavern in Chickasha, and after identifying the defendant as George Edward Fred, she stated that the defendant was by himself in the tavern from around 6:30 or 7:00 p.m. until approximately 9:00 p.m.

Rod Rinn's testimony was that on February 2, 1973, he lived at 1727 Tennessee in Chickasha, and the defendant was his friend. On the night in question the defendant came over to his house between 9:00 and 10:00 p.m., borrowed $5.00, and asked Rinn to help him move a TV from the front seat of his car to the back seat. Rinn stated that defendant told him he had stolen the television; however, he helped defendant move the TV in defendant's car (a 1965 or 1966 white Dodge or Plymouth), and that the TV was a big, brown console television with the legs screwed off. Defendant borrowed a .22 caliber pistol from him, which defendant loaded and stuck in his pocket, or belt, and left. There was no one with defendant when he came to Rinn's house, and no one was with him when he left.

Melvin Ashley testified that he resided at 1021 SW 52nd, Oklahoma City, Oklahoma, and he and defendant were friends. On February 2, 1973, defendant came to his house between 9:30 and 10:30 p.m. and said that he had a TV for sale, which he had obtained from a Negro male who owed him some money. Defendant told Ashley that the Negro male had gotten the TV from some people who had beaten an old man. Defendant sold the TV to Bob Thompson who was at Ashley's house that evening. The next time Ashley saw the defendant was on February 9, 1973, at which time the defendant told him that an old lady had been beaten to get the TV instead of an old man, and that

they had found blood all over the floor at the place where it had happened. On February 11th, defendant took Ashley to work at which time he noticed the turtle back and observed the trunk mat was missing. When he asked defendant about the missing mat defendant replied that he had cleaned it out and thrown it away.

Bob D. Thompson testified that he resided at 801 SW 48th, Oklahoma City, and on the night of February 2, 1973, he purchased a TV from defendant for $10.00. The TV was located in the back seat of defendant's car and he and defendant left Melvin Ashley's home and took the TV to Thompson's house. The TV stayed at his house until James Turner and Earnest Lovett, agents from the Oklahoma State Bureau of Investigation, picked it up. When the agents arrived, Thompson put his initials on the back of the set.

Kenneth Lee Hurst testified that he resided at 1123 S. 15th, Chickasha, Oklahoma, and he and defendant were "pretty good friends." On the morning of February 3, 1973, defendant came to his house, driving his car (a 1966 or 1967 Plymouth or Dodge), which appeared to be unusually clean. Hurst stated that defendant had said he had not slept the night before. On February 5th, defendant had ridden to Oklahoma City with Hurst and Gary Henry, and on this trip there was conversation with regard to the disappearance of Mrs. Shaw. Hurst jokingly asked defendant where he hid the body and defendant did not respond.

Don Hall, a Baptist Minister in Chickasha, testified that he knew the defendant, having met him on February 5th while on church visitation of a new-comers list from the Public Service, during which time defendant said Mrs. Shaw was missing—that the Lord had taken her.

Ernest Moore, a television appliance dealer in Chickasha, testified that he had sold an Admiral color television set to Mrs. Edna Shaw Model No. LN5331, Serial No. 14626198 (State's Exhibit No. 60). He identified the Exhibit as the same set he sold Mrs. Shaw, and stated that in Feb-

ruary of 1973, the value of Mrs. Shaw's set would be approximately $100 to $200.00.

At this juncture in the trial, the counsel stipulated that if Dr. Clyde Snow, an expert in physical anthropology, were called and sworn as a witness on behalf of the State of Oklahoma, he would testify that on February 14, 1973, he visited a wooded scene approximately 38.8 miles north of Chickasha, located in the southwest corner of Canadian County; that he was directed to this location where he observed the partial remains of a human body, and that he examined these remains at the scene and also after the remains were removed to the State Medical Examiner's Office in Oklahoma City. From examination and observation, and his training and experience, he estimated this person to be a Caucasoid female between 55 and 70 years, close to five feet, six inches tall, prior to death. His findings were a moderate to severe condition of osteoarthritis; the front teeth were intact but the back teeth were out, and there was a gap between the front teeth.

Following an in camera Jackson-Denno type hearing regarding the admissibility of certain evidence, the State called Danny Wheeler, a detective for the Chickasha Police Department, who had investigated the disappearance of Mrs. Shaw and the disappearance of the color TV from her residence. Wheeler testified that he was summoned to the Shaw residence at 6:40 a.m. on February 3, 1973. When he arrived at the Shaw apartment, it was generally unruly in the house, with books and other objects laying on the floor. As he went into the kitchen the dishes were still on the table from a meal. There was a large blood spot on the floor and next to this blood spot there was a pair of eyeglasses laying between the blood spot and the refrigerator. Blood was also on the bottom of the back door and on some steps outside the residence. He further testified that the building at 1209 Colorado is a two-story, wood-framed apartment house with two apartments downstairs and one apartment upstairs, and Mrs. Shaw's apartment was the south apart-

ment on the ground level. There was no sign of forcible entry into the apartment. He identified a number of exhibits found at Mrs. Shaw's apartment.

Detective Wheeler then testified that he first came into contact with defendant at approximately 11:30 a.m. on February 12, 1973, at defendant's place of employment. He advised defendant of his Miranda rights, and at that time defendant appeared calm and went with the officers to Alexander's Cafe in Chickasha, where they ate. After eating, the defendant read and signed a Consent to Search form of his house and car. They went to defendant's house at 1606½ S. 17th Street in Chickasha, where he discovered, in the bedroom, a white shirt, an orange shirt, and a pair of tan shoes which had blood stains on them. Agent Lovett, Sheriff Lee Looper, Detective Bob Snell and defendant then went to the defendant's car where a tube of muffler cement, which had blood stains on it, was seized. Detective Wheeler identified, by his initials on the lapel, a jacket which was found on February 14th in the creek bed of Boggy Creek, northwest of Minco, Oklahoma. He also identified a photograph of the jacket laying in the creek bed of Boggy Creek.

Frank Brady, an agent for the Oklahoma State Bureau of Investigation, testified that the first time he saw the defendant was on February 12, 1973, at the Bureau headquarters in Oklahoma City, where he advised defendant of his Miranda rights prior to his conversation with defendant, and that defendant appeared to be normal, cooperative and talkative. Brady then inquired of defendant as to his activities on February 2, 1973, and defendant told them that between 7:00 and 7:30 p.m. on that day, he went to the Green Parrot Lounge in Chickasha, shot pool until approximately 9:00 or 9:30, at which time he purchased a six pack of beer and went to his residence. While he was watching television he fell asleep and awoke at approximately 1:30 a.m. When asked if he had been to Rod Rinn's house in Chickasha and gotten assistance in moving a TV set from the front of his car to the back seat of his car, and also if he had borrowed

$5.00 from Rinn at approximately 9:30 p.m. on February 2, 1973, defendant hesitated for a short period of time and then blurted out, as he hit the table in front of him, "I killed her. . . ." Later he added that he really did not kill her, but he, was responsible for her death.

Earnest Lovett, an agent for the O.S.B.I. and was the investigating officer in this case, stated that his first contact with defendant was on February 12, 1973, at 11:30 a.m. at defendant's place of employment in Chickasha. The defendant was escorted by Sheriff Looper and Detective Snell to Lovett's vehicle and Lovett introduced himself and Detective Snell, at which time he told defendant that the officers were there to investigate the disappearance and possible murder of Edna Shaw and wanted to talk with him regarding any knowledge he might have. Before discussing the case, Lovett advised defendant of his Miranda rights and filled out a Miranda warning card which defendant read and signed. At that time defendant appeared calm and relaxed, and answered the questions directly, clearly and intelligently. Defendant discussed his activities on February 2nd, telling Lovett essentially the same story he had told Agent Brady. He said that he had knowledge of what happened to Mrs. Shaw, that he wanted to cooperate with the officers, the investigation, and prove his innocence; also, he wished to assist the officers in attempting to find out if Mrs. Shaw had been murdered, and if so, who had murdered her. They were at defendant's place of employment for approximately 35 to 40 minutes and then Detective Snell, Detective Wheeler, the defendant and Lovett went to Alexander's Cafe for lunch. After lunch they again advised defendant of his constitutional rights and read the defendant the waiver of consent to search his apartment and automobile, which defendant said he understood and signed. They then went to the police department where they got an ink-rolled print from defendant to compare with latent prints which may have been found in the victim's home. They then proceeded to defendant's apartment

where defendant unlocked the door and admitted the officers. Lovett testified as to the items found in the apartment and car, and further stated that a piece of trunk mat was found and that the trunk appeared to have been washed out hurriedly and was clean. Lovett then proceeded to Oklahoma City to the O.S.B.I. Headquarters where defendant was again advised of his rights. Defendant appeared calm and was answering questions and had not changed any from their first contact earlier that day. Lovett reiterated the story, as testified to by Agent Brady, concerning the television, $5.00, etc. After this interview they returned to Chickasha around 7:00 p.m.

Upon returning to Chickasha, defendant was again advised of his rights (Miranda warnings) which defendant read and signed. Officer Turner then began taking down the statement furnished by defendant, which defendant had initialed on each page and signed at the back. [See Appendix—Exhibit 34]. Lovett testified that this was completed around 11:02 p.m. and they went to Lawrence's Cafe to eat, where defendant appeared calm, and more relaxed. After eating, the defendant returned to the Sheriff's Office.

Lovett then testified that the next contact he had with the defendant was at 2:15 p.m. on February 13, 1973, at which time the defendant appeared to be upset or anxious and that a doctor was called to examine him. The doctor arrived at 3:20 p.m.; however, before the doctor arrived, defendant stated that he could show the officers where Edna Shaw's body was. When the doctor arrived he examined the defendant and prescribed valium, and defendant took two tablets at 3:40 p.m., and signed a waiver of his rights. Lovett stated that defendant's condition had definitely improved and he was able to control himself, had a clear voice, and gave direct responses to questions.

Lovett, Investigator Turner, Detective Wheeler and defendant proceeded by car, under the direction of defendant, to Highway 81 north to Minco, turned west on Highway

152 to Highway 37, where they turned toward Hinton, turned south on a county road and drove seven-tenths of a mile south to a creek area which was surrounded by timber when defendant stated, "This is where the body should be found" or "would be found." Lovett testified that from where they stopped he could see approximately 50 feet away a burned area in the shrubbery; he then proceeded until he could see a right arm, the head and chest cavity of a human being lying on a log with the arm stretched out. At 6:15 p.m., they left the area guarded and decided to process the scene the next morning.

On the way back to Chickasha, defendant took two more tablets of valium. Upon arrival in Chickasha, about 7:00 p.m., they ate dinner at George's Steakhouse. From there they proceeded to the Sheriff's Office where defendant again was advised of his rights and the Miranda warning, which he signed. The defendant appeared calm, able to communicate and responsive to the questions.

Lovett then testified that the defendant initialed and signed a statement at 10:30 p.m. [See Appendix—Exhibit 36].

On February 14, 1973, at 10:35 a.m., Lovett arrived at the scene of the body. From there he proceeded to Boggy Creek Bridge on State Highway 37, where he found the following items:

1. A Chickasha newspaper addressed to 1602½ South 17th Street;
2. A gabardine jacket;
3. A trunk mat;
4. An empty aluminum foil box;
5. A piece of aluminum foil;
6. A bloody rag;
7. A cord about one-quarter inch in diameter;
8. A piece of compressed board.

Lovett stated that the trunk mat had the same type checked pattern as the one in defendant's trunk. He further testified that he later obtained the television set from Bob Thompson in Oklahoma City, and released it to the Grady County Sheriff

Dr. A. J. Chapman testified that he was the Chief Medical Examiner for the State of Oklahoma. On February 14, 1973, he visited a scene northwest of Minco, Oklahoma, because Mr. Tom Puckett, Chief Agent for the State Bureau of Investigation, notified him that a body had been found in this location. The doctor then described the body found at the scene. There were extensive contusions on the back part of the hand; the skin of the face and head was extensively burned; lacerations and multiple areas of contusions were present in the scalp area; hemorrhages were also associated with the fractures in the brain area. Dr. Chapman described these wounds as "defense wounds"—that is, wounds occurring to the body when a person is trying to ward off an attack. In his opinion, the person died from traumatic head injuries caused by being beaten in the head a minimum of eight times, with a blunt instrument, and was dead before her body was burned, and that the manner in which the injuries were inflicted was homicidal, not accidental.

Raymond Homer, an Identification Officer with the O.S.B.I., working with fingerprints, photography and class identification, testified that he assisted in the criminal investigation near Minco at the site where the victim was found. He also identified the objects found near Boggy Creek. Mr. Homer matched certain latent fingerprints of Mrs. Shaw found on a mayonnaise jar in her apartment, with the right thumb fingerprint taken from the victim.

Jerry Erwin, Sheriff of Canadian County, testified that he visited a scene in his county with officers from Grady County, and also searched the Boggy Creek area with the officers.

William J. Covey, a forensic chemist for the O.S.B.I. conducted tests on various items of evidence and determined that blood stains were present on certain items introduced into evidence, such as the eyeglasses.

Carl Cloud, technician for the O.S.B.I., testified that he was assigned to the firearms and photography section of the State Bureau. He was called to photograph the crime scene and identified certain photographs which he took at the scene and at Boggy Creek.

John McAuliff, Chief Chemist for the O.S.B.I., testified that his work involved the analysis and examination of all physical evidence through law enforcement agencies throughout Oklahoma. He then identified various exhibits under his control.

Robert Frank Byrd, on direct examination, testified that he was living in Chickasha in January of 1973 and was in a pawn shop in Chickasha on January 29, 1973, attempting to purchase a gun but could not because he had no driver's license. Defendant was also present at the pawn shop and followed Mr. Byrd outside, asking him what kind of gun he was interested in purchasing. Defendant offered to sell him a .38 police special, which he did not buy. This meeting was his last contact with defendant. On February 2, 1973, Mr. Byrd was in Mercy Hospital in Oklahoma City.

James Turner testified he worked for the Sixth District Attorney's Office of the State of Oklahoma, and was involved in the investigation of the disappearance of Mrs. Shaw when he first met the defendant. Mr. Turner gave defendant his basic rights under Miranda, and identified an exhibit with Fred's signature on the Miranda rights form, dated the 12th of February, 1973. Mr. Turner then took down a statement made in narrative form given by defendant as to the events on the night of February 2, 1973 [See Appendix—Exhibit 34]. He stated that defendant appeared calm and talked in a reasonable manner. Most of the statement was then read by Mr. Turner. Mr. Turner further

testified that the defendant was again advised of his rights under Miranda before he took the officers to Mrs. Shaw's body. After defendant promised to show the officers Mrs. Shaw's body, he was again advised of his rights under Miranda. Upon finding the body, officers were left to guard it that night. Upon arriving at the Sheriff's Office, defendant was readvised of the same Miranda warning and he signed another waiver and then made another statement [See Appendix—Exhibit 36]. The next morning Mr. Turner returned to the area in which the body was found and searched for other physical evidence at the scene.

The exhibits were circulated among the members of the jury and the State then rested.

The defendant demurred to the State's evidence upon the grounds that the same is insufficient to support the charge of Murder.

The jury found the defendant guilty of Manslaughter in the First Degree, and fixed his punishment at imprisonment in the State Penitentiary for thirty-five (35) years.

In defendant's first proposition, he argues that the statements attributable to defendant on the 12th and 13th days of February, 1973, are inadmissible for the reason that the Miranda waiver, as well as the statements themselves, were obtained under conditions inherently coercive in nature and in violation of defendant's constitutional rights. Defendant's contention is based on three allegations: (1) that defendant's arrest was illegal; (2) defendant was held incommunicado; and (3) that defendant's physical and mental condition rendered his statements involuntary.

As to defendant's first contention, we find that defendant's arrest was legal and based on sufficient probable cause. After carefully examining the facts and evidence, we find that the State had probable cause, and not mere suspicion, to arrest defendant on the charge of larceny of the deceased's television. The police and jail records reveal that

the defendant was charged with larceny of the television on February 13, 1973. See 22 O.S. 1971, § 186; 22 O.S. 1971, § 190 and *Henry* v. *State*, Okl.Cr., 494 P.2d 661 (1972).

This Court has held that mere delay in arraignment of a prisoner will not render the statement or confession involuntary, nor inadmissible, if it is otherwise shown to be voluntary and given without coercion, fear produced by threats or mistreatment, or promises of such a nature that would induce defendant to relate an untruth.

The record clearly reveals that defendant was, on numerous occasions, given his Miranda rights, his right to remain silent, that anything he said could be used against him in a court of law, that he had the right to the presence of an attorney, and that if he could not afford an attorney, one would be appointed for him prior to questioning, if he so desired. Defendant was afforded the option to exercise his rights throughout the interrogation. *Miranda* v. *Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966).

This Court, in *Castleberry* v. *State*, Okl.Cr., 522 P.2d 257, 269 (1974), held:

> ". . . This Court will not disturb the trial court's ruling permitting the introduction of a confession if supported by sufficient evidence that the defendant knowingly and intelligently waived his rights and understood the consequences of said waiver. Warren v. State, Okl.Cr., 495 P.2d 837."

We find that the defendant consistently, knowingly and intelligently waived those rights and agreed to answer questions and make a statement, and that the trial court properly ruled on the legality of the arrest and voluntariness of subsequent statements.

The defendant also contends that he was held incommunicado without counsel. The Court finds that this contention is without merit, as the record reveals that the defendant consistently waived his right to counsel.

Defendant further contends, regarding the defendant's confession at OSBI Headquarters, that the officer failed to mention that the statement could be used as evidence in Court against him. The State submits that defendant had been repeatedly given his rights as stated in *Miranda* v. *Arizona*, supra, and that such verbatim repetition is generally held to be unnecessary. See *Maguire* v. *U. S.*, 396 F.2d 327 (9th Cir. 1968); *Miller* v. *U. S.*, 396 F.2d 492 (8th Cir. 1968); *U. S.* v. *Mansfield*, 381 F.2d 961 (7th Cir. 1967); and *Moreno* v. *State*, Okl.Cr., 504 P.2d 1241 (1972).

It is defendant's further contention that his statement on the evening of February 13, 1973 [See Appendix—Exhibit 36], was inadmissible because of his emotional state. However, the record reveals, and as the trial court ruled in the Jackson-Denno hearing, that defendant's nervousness was precipitated by his own statement that he killed Mrs. Shaw or was responsible for her death, and not the other way around. Agent Lovett testified that defendant was again advised of his rights (Miranda warnings) which he read and signed; that defendant appeared calm and had control of his faculties and gave direct responses to the questions and that defendant initialed each page and signed the statement on the back.

Defendant's third contention is that his statements were inadmissible because he was allegedly suffering from withdrawal of heroin and was under the influence of the drug valium when he made such statements. The Court cannot agree with this contention. There is no evidence presented by defendant which sufficiently shows that defendant's will was overborne. On the contrary, the record reveals that even defendant's expert witness at the Motion to Suppress was not sure what effect valium would have on a heroin addict nor the effect on heroin withdrawal, nor even defendant's tolerance to the drug. Furthermore, the trial court stated, in its ruling on the Jackson-Denno hearing:

". . . The Court finds that the defendant was fully advised of his rights under Miranda prior to his Exhibit No. 36; that he fully understood those rights, and that he voluntarily and intelligently waived these rights prior to agreeing to show where this body was; that such statements were voluntarily and intelligently made, and the acts that he performed in accordance therewith were voluntarily and intelligently done; that none of them was given or done at a time when the defendant's will was overborne, and that each was the product of a rational intellect and a free will. In regard to these items, the Court specifically finds that there was no withdrawal from drugs affecting the defendant during this period sufficient to overbear the defendant's will. We have a number of doctors' statements. The doctor from the hospital at Norman indicated if he had been in withdrawal it would have shown up on the 15th when he was over there. The Court finds that the valium prescribed by Dr. McDougal, taken by the defendant at this time, during this period, shortly before this time, did not sufficiently affect the defendant's mental processes to cause his will to be overborne or to prevent his subsequent statements, actions or omissions and acts from being the product of a rational intellect and free will. Now, that is in regard to Exhibit No. 36.

"Now, in regard to Exhibit No. 37 and No. 38. This involves another Miranda warning given at 7:50 on the night of February 13th. This is after the defendant had been up to the southwest corner of Canadian County; at about 6:30 on the way back he took two more valium tablets, and then they had stopped out at George's Steakhouse, at which time there the defendant had eaten a regular meal of ribs. After they finished eating out there, then they came down to the Sheriff's Office and that is when this No. 37 and No. 38 was done. Now, again, we have all the statements of the officers of the

defendant's actions, we have the statements of the doctors who stated that if he had been under withdrawal it would have shown up on the 16th when they examined him on the morning of the 16th. There is no evidence that I could find of any withdrawal as such, other than certain statements made by the defendant himself. Dr. Harrison had examined him on the morning of the 13th out at the hospital and didn't see any evidence, any symptoms of it. He admitted that he didn't know what the symptoms were but when asked the specific symptoms that the other doctors had stated were symptoms, he said that he didn't notice any. So, in regard to the last two items, again, the Court finds to the Court's satisfaction that the defendant had been fully advised of his rights under Miranda, and Exhibit No. 37; that he fully understood his rights under Miranda; that he voluntarily and intelligently waived his rights prior to making the statement.

"In regard to Exhibit No. 38, it is the Court's conclusion that it was voluntarily and intelligently made; that it was not given at a time when defendant's will was overborne, and it was a product of a rational intellect and a free will.

"The Court specifically finds in regard to these two exhibits that there was no withdrawal from drugs affecting the defendant during this period that was sufficient to overbear defendant's will; that the valium prescribed by Dr. McDougal and taken by defendant during this period—now, this made a total of four of those tablets, two of them at 3:40 and two at 6:10—spaced during all this period of activity—did not sufficiently affect the defendant's mental processes to cause his will to be overborne or to prevent such statements and this waiver of his constitutional rights under Miranda being the acts and product of a rational intellect and a free will, the Court finds that they were voluntarily and intelligently made."

It has been held that the question of voluntariness of confessions or consent to search is a question of fact and that being under the influence of narcotics does not necessarily preclude giving voluntary consent to search. *People* v. *Garcia*, 38 Cal.Reptr. 670, 227 Cal.App.2d 345 (1964).

The Court in *Ortiz* v. *United States*, 318 F.2d 450 (9th Cir. 1963), stated that for a confession made while under the influence of a narcotic drug to be invalidated, the record must show that the defendant's ability to comprehend questions and his coherency be affected by the drug. From the record, it appears defendant was able to comprehend the questions and answered all questions coherently and in an intelligible manner. Therefore, this Court finds the defendants proposition of error to be without merit.

The defendant's second proposition is that evidence derived as the result of an unreasonable search and seizure, or discovered by the use of an involuntary confession, is inadmissible. The defendant contends that the search of defendant's apartment and automobile were invalid because of the reasons discussed in Proposition I. However, because the Court found that the defendant voluntarily, knowingly and intelligently waived his rights under *Miranda* v. *Arizona*, supra, the searches were valid. The trial court properly ruled on the matter when it stated:

> "The Court finds this search—in other words you have got a consent to search here, which had been preceded by Miranda warning, and the Court finds that the appellant has been fully advised of his rights under Miranda prior to his consent to search, and that he had voluntarily and intelligently waived those rights, and that he voluntarily and intelligently executed a valid consent to search. Taking into consideration all of the evidence the Court is satisfied with that."

Where there is any evidence upon which a verdict can be based, the verdict will not be disturbed on appeal. See *Glover* v. *State*, Okl.Cr., 524 P.2d 51 (1974). The court con-

sidered the statements from doctors concerning withdrawal effect which might affect the voluntariness of defendant's waiver of his rights, and the court found his waiver to be voluntary. Such statements would be sufficient evidence to support the verdict; therefore, the contention of defendant is without merit.

The defendant's third proposition alleges that the State did not sufficiently prove the corpus delicti. Corpus delicti is defined in *Wharton's Criminal Evidence*, Thirteenth Edition, Section 691 as follows:

> "The corpus delicti, meaning the body or substance of the crime charged, involves two elements: (1) An injury which is penally proscribed—e.g., in an unlawful homicide, a person killed; in larceny, certain property missing; and (2) the unlawfulness of some person's conduct in causing that injury. Proof that the defendant was the person who engaged in the unlawful conduct is of course necessary for a conviction, but it is not an element of the corpus delicti. . . ."

It is also a well-settled rule that the corpus delicti may be established by direct or circumstantial evidence, or both. *Pumpkin* v. *State*, Okl.Cr., 295 P.2d 819 (1956). In *Pumpkin* v. *State*, supra, it was also held that the order of proof is generally within the discretion of the trial court and if error is committed in admitting testimony of guilt before the corpus delicti is established, the error is cured when the subsequent testimony sufficiently establishes the corpus delicti. The Court held in *Pumpkin* v. *State*, supra, at 823:

> "Direct and positive proof is not essential to establish the corpus delicti, and it may be proved by circumstantial evidence. When it is proved by circumstantial evidence, the question should be submitted to the jury along with other questions of fact in the case, as to whether or not the state has established the corpus delicti beyond a reasonable doubt."

See also *Ridinger* v. *State*, Okl.Cr., 267 P.2d 175 (1953) and *Osborn* v. *State*, 86 Okl.Cr. 259, 194 P.2d 176 (1948).

Defendant cites *Bonicelli* v. *State*, Okl.Cr., 339 P.2d 1063 (1959), in support of reversing his conviction. However, the *Bonicelli* case can be distinguished in that in that case there was no evidence other than the defendant's confession that he had committed the burglary. In the instant case there is independent evidence, and not solely that of defendant's confession, establishing the crime which had been committed. At trial, the State showed that the deceased, Edna Shaw, was missing; her glasses were found near pools of blood in her apartment and down the back steps; neighbors heard loud voices and the sound of something being dragged; Mrs. Shaw's boarder discovered the deceased and her TV missing; the deceased called her sister and in a whispering voice told her to call back in five minutes; the front door was padlocked from the outside; there was no sign of forcible entry; the defendant was a friend of the deceased; the defendant was seen with the deceased's television; and defendant told friends that it was stolen; there were blood stains found in the defendant's car and on shorts and a pair of shoes found in his apartment. Taking into consideration all of the above and evidence adduced at trial, we hold that the corpus delicti was shown independently of defendant's statement.

Defendant's last proposition asserts that the sentence was excessive and was shown to be a product of the photograph of the deceased's body. Defendant contends that the sentence was so excessive as to suggest that the same was given under passion and prejudice, influenced by a gruesome and gory photograph of the deceased. The defendant failed to explicitly explain the nature of the photograph or the effect of it on the jury.

In *Abel* v. *State*, Okl.Cr., 507 P.2d 569, 572 (1973), this Court said:

"The second proposition contends that the court erred in admitting the photographs of the deceased into evidence. The defendant argues that the photographs were inflammatory and prejudicial and that no proper foundation was laid for their admission into evidence. We are of the opinion that the photographs were properly admitted. In Pate v. State, Okl.Cr., 361 P.2d 1086, we stated in the eighth and ninth paragraphs of the Syllabus:

> 'When a photograph is shown to be a faithful reproduction of whatever it purports to reproduce, it is admissible in evidence, as an appropriate aid to the jury in applying the evidence and this is equally true whether it relates to persons, things, or places.
>
> 'Although it is error to receive in evidence gruesome photographs of a homicide victim, designed primarily to arrouse [sic] the passion of the jury, such photographs are admissible; when they are relevant to the issues before the court and their probative value is not outweighed by the danger of prejudice to the defendant.' "

Further, in *Vavra* v. *State*, Okl.Cr., 509 P.2d 1379 (1973), this Court held that the admissibility of a photograph into evidence in a criminal case was a matter left to the discretion of the trial court under the circumstances of a particular case. See also *McNutt* v. *State*, Okl.Cr., 288 P.2d 418 (1955); *Arnold* v. *State*, Okl.Cr., 291 P.2d 1044 (1955); and *Snake* v. *State*, Okl.Cr., 453 P.2d 287 (1969).

The Court finds that no abuse of judicial discretion is reflected in the record. The photograph in question was identified by several witnesses as being the true and correct pictorial representation of the body of the deceased Edna Shaw when discovered by the police. We are of the opinion that the facts in this case show that the probative value of this photograph outweighed the prejudicial effect and was, therefore, admissible in evidence.

As to defendant's contention that the sentence is excessive, we reiterate our holding in *Roberts* v. *State*, Okl. Cr., 473 P.2d 264 (1970), wherein we stated, in the second paragraph of the Syllabus:

> "The question of excessiveness of punishment must be determined by a study of all the facts and circumstances in each particular case, and the Court of Criminal Appeals does not have the power to modify a sentence unless we can conscientiously say that under all facts and circumstances the sentence is so excessive as to shock the conscience of the court."

See also *Futerll* v. *State*, Okl.Cr., 501 P.2d 901 (1972).

An examination of the record does not reveal the sentence is a result of passion or prejudice and this Court has consistently held that a sentence will not be disturbed on appeal if it is within the statutory limits. See *Fields* v. *State*, Okl.Cr., 501 P.2d 1390 (1972) and *Callaway* v. *State*, Okl.Cr., 518 P.2d 1277 (1974). For this reason, we find that in light of the evidence of defendant's guilt, and the fact that the record reveals that the defendant was charged with Murder and the jury sentenced him to 35 years for Manslaughter in the First Degree, the punishment assessed by the jury was not excessive. We, therefore, find this proposition of error to be without merit.

For all of the above and foregoing reasons, the judgment and sentence appealed from is accordingly *AFFIRMED*.

AN APPEAL FROM THE DISTRICT COURT, GRADY COUNTY, OKLAHOMA,

HONORABLE SAM WILLIAMS, JUDGE.

GEORGE EDWARD FRED was convicted for the offense of Manslaughter in the First Degree; his punishment was fixed

at thirty-five (35) years imprisonment, and he appeals. *AFFIRMED.*

PARK, NELSON AND CAYWOOD
By KERRY W. CAYWOOD,
CHICKASHA, OKLAHOMA,
Attorney for Appellant,

LARRY DERRYBERRY, ATTORNEY GENERAL,
JAMES L. SWARTZ, ASST. ATTY. GENERAL,
DAVID K. McCURDY, LEGAL INTERN,
Attorneys for Appellee.

OPINION BY BUSSEY, J.,

BLISS, P. J. Concurs,
BRETT, J. Concurs in Results.

EXHIBIT 34*

[Appended to the Opinion]

George Edward Fred w/m 2-4-53
1602 South 17th 222-0384

Re: Edna Shaw

J. Turner, E. Lovett, B. Snell, D. Wheeler, 7:25 A.M.—2-12-73

I have lived here in Chickasha, Okla. since Oct. 8, 1972. I lived in Welborn Hotel, room # 7. I stayed until Nov. 26, 71. Then I moved to an apt. 1209 Colo. on the North side. I stayed there from Nov. 26 til Jan. 17, 73. I first met Mrs. Edna Shaw when I first moved in. I didn't see her much while there. I was busy painting the apartment and plastering and putting up curtain. She lived in the South apartment.

* The name "G.E. Fred" and all initials, omitted.

I visited in her apartment three or four times. She came over to see about me a few times. I ate with her and James Lewis once in her apartment. She had a color T.V. brown in color with screw on legs. Big screen 23" screen, I think.

She once kinda ask me if I was interested in her sexually. She said "when is the last time you had a little." She drank quite a lot. I took her to a liquor store; Georges on Choctaw. She bought Sunny Brook bourbon and Smirnoff Vodka. She got a govt. check. I don't know when she got it. I took her to Safeway to cash it once. She had a lot of drinking buddies.

I worked for H. & P. Drilling Co. out of Tulsa on Rig 53. I later got a job with E. W. Moran out of Wichita Falls, Tex. We worked west of Marlow during the ice and snow. I went to work last Tuesday 2-6-73 for Lawrence Machine Shop as a welder and trimmer.

Jan. 29, 73 I was at 81 Pawn Shop to pawn a radio. While I was there a colored man in his early 20's 5'11", approx 160, semi Afro hair, thin moustache first name Andy came in. He was trying to buy a 38 pistol. The lady ask him after she showed him a gun if he had an Okla. Drivers License. He said he didn't and she wouldn't sell him the gun. This was approx. 3 P.M.

He started walking out and I happened think of Rod Rinn having a .38 pistol that I had borrowed. I told Andy I knew of a 38 special. I told him the price would be $40.00. I had the 38 at my house at the time. He said he wanted to talk to me about it.

I gave him a ride down to in front of the Chickasha hotel. He said he was from New Iberia, La. He said he wasn't working but that he was just living off what he stole. He said he stole cars, motorcycle, guns, stereo's, even dope.

We made arrangements to meet at the corner beside the hotel at 7:30 P.M. across the street from the Bus Station. I told him to have the $40.00.

I met him at approx. 7:30 P.M. I drove my car, a 67 Dodge Coronet, 2 Dr. Hardtop, XV6569, 73 Okla. tag.

Andy got in the car with me when I drove up. We drove across the street. I took the gun out from underneath the seat when we parked. I showed it to him and he looked at it and was well pleased with it. He talked me into letting him have it for $20.00 down. I took the $20.00 and he put the gun in his belt. I ask him if he wanted a lift anyplace. He wanted to go to the 100 block of Oregon. He got out there. I don't know what house he was supposed to live in there. The last he said was he would pay me the rest of the money.

The next time I saw him was Thursday night 2-1-73 about 8 P.M. He was walking across the street from the Bus Station toward the Chickasha hotel restaurant. I ask him about the $20.00. He said he didn't have the money. He said he hadn't been able to rip off anything or sell anything. He & I went back to the car and I gave him back the $20.00 and he gave me back the gun.

While we were sitting in the car talking he ask me if I knew anything he could steal and I happened to think of Edna Shaw and her having a color T.V.

I told him I knew a lady I used to live next door to who had a color T.V. that would be pretty easy to get. His eyes brightened up and he seemed interested.

I agreed to take him by the next night. I was to meet him the next Friday 2-2-73 at the same place. He agreed to go in and get the T.V. and I was to take the T.V. to Okla. City and sell it.

I told him the old lady was old and lived alone. I didn't tell him the address nor how to get into the houes at that time. He got out of the car and walked off. I drove out to

the Stork Club and stayed until one or two o'clock, and then went home.

Friday 2-2-73, I spent part of the day trying to get a job. I tried the Research Center, then Stidhams Horse Trailers, Love Horse Trailers, Circle H Horse Trailers. I just spent most of the day trying to get a job.

About 5:30 or 6 P.M. I went home and cleaned up. I dressed nice. I can't remember for sure what clothes but I think I wore brown socks and flowered colored shirt. I wore my green colored Marine cap. I went to the Green Parrot Club. I got there between 7 and 7:30 P.M. I had a few beers and lost about $15.00 shooting pool. Some college kid with some girls beat me (2 or 3 girls). The girls cheered when I flubbed a shot. He is about 22, 5'5", 150 lb., short brown hair. I left about five minutes til 9 P.M. I left my cap in the bar. I never went back and got it. Louise was the bar maid. A girl by the name of Marylyn with red hair was there. Marylyn tried to get me to go out to the Stork Club with her.

When I left the bar I drove to the Chickasha hotel. Andy was there waiting for me. He got in and we went down Choctaw down to 12th and turned South and went to Colo. I showed him 1209 Colorado.

We had already agreed that he would take my car. He didn't have a car. I told to knock on the back door. I told him to try the door and if it was unlocked to go on in and if it was locked to knock on the door and if the old lady answered to tell her it was Freddie. I showed him where the alley was. I told him to leave his lights off til he got on 12th Street so they won't see my tag. I told him she was an alcoholic and would probably be drunk. I didn't expect for him to have any trouble at all. I told him not to let her see his face. I didn't go at all because if she saw me she would recognize me.

He let me out on the corner of Iowa and 12th Street. Across the street from the Grocery Store. He let me out a

few minutes after 9:10 P.M. He made a right on Minnesota, he must of made a complete block on 13th Street.

I smoked a couple of cigarettes. He was out of there by 9:35 or 9:40 P.M. I was looking at my watch every minute. No cars came by or no one walked by that I saw.

The next I saw of him he was coming out of the alley behind 1209 Colo. He made a real sharp turn out 12th Street and he pulled up to where I was.

The right side door wasn't completely closed. The legs on the T.V. wouldn't let it shut. I opened the door on the right side. I pried the T.V. up and got into the back seat.

He took a right on Minnesota going west. I ask him "How did it go Andy?" and he said "what do you think?" and he patted the T.V. I ask "did you have any trouble? Did anybody see you?" He said "aw now except that old man, he caught me and I hit him over the head." I ask him "did you kill him?" and he said "aw I just knocked him out."

We went back to my house and he parked it on the North side where I allways park. He was still shakey; trembling. We both went into my house. We opened a can of beer. He said "are you going to get rid of that tonight?" I said "I guess so."

I was broke but I didn't try to get any money from him. I wasn't in the house over 10 minutes. The left side of his shirt was stained. He had on a pale orange colored shirt (it might have been green; it was light colored), and blue jeans and a blue jean jacket. Oh yes he had on a pair of brown buckle slip-on shoes of mine; size 10 that he had put on in the car. He had seen them in my car before we got to the house (Edna Shaws) and he had ask me if I cared if he wore them.

I told him he could wear them. I didn't notice any blood on them at the time we were at the house. I noticed blood on them today.

I left him there at my house. I left at 15 til 10 P.M. I went to Rod Rinns house to borrow some money. I knocked on the door and went in. He and his wife were there. There was some other couple there. Bob and Carrol I think. He introduced them to me. When I got inside he ask me if I wanted a beer. He opened me one. I ask him if I could talk to him in the bedroom. He and I went into the bedroom. I told him I had just stolen a color T.V. He ask me for a little bit more detail. I just told him I was involved in it. I had to get rid of the T.V. I told him the guy that done it had said he had got caught by an old man and he had had to knock him out.

I ask him if he would help me move the T.V. from the front to the back seat. I said that way your fingerprints would be on it. I said this in front of his wife and his company.

He put a shirt on came out side and we unscrewed two legs off the T.V. and put the T.V. in the back seat of my car. He gave me the $5.00 and I got into my car and I drove East on hiway 62 and I got two dollars worth of gas at the Champlin service station just before you get on the Turnpike. I also got change for a dollar and I got a coke and took it with me. I guess I was at the station until approx. 9:55 P.M. I'm not sure about the coke.

I got on the Turnpike and went North to Okla. City. I drove to Southwestern Ave. and got off the Turnpike. I went North up Western to the second service station North of the Turnpike. A Kerr McGee Ser. Station. I called Mike Johnson at either 632-6037 or 632-6107. I got the phone number from a man named Phillip that I met at the Pub here in Chickasha. He, Phillip had told me that if I ever needed to get rid of anything this Mike Johnson could get rid of it for me. Phillip is w/m under 21, 5'10", 170 lbs., red kinky hair and beard and green eyes. He used to work for the city, in the Water Dept. This was in Dec. He uses drugs.

He has gone to Houston because of drugs. He has been back one time since he went to Houston. He drives a small green foreign made car, a 70 or 71 model.

After I called Mike Johnson it was 5 or 10 minutes before he got there. He is w/m 25 or 26, 5'7", 190 lb. brown hair short. He was driving a dark blue late model (70 or 71) fast back Mustang. I had told him I had a color T.V. console Delux. I believe the T.V. was an R.C.A. He had ask me if it worked I told him yeah.

He ask me if it worked when he looked at it. I told him I had just stolen it. I ask him a hundred dollars for it. He offered me fifty and I took it. Fifty dollars is better than nothing.

He pulled his car in and backed it up beside of my car and I helped him put it into the trunk of his car.

He reached into his wallet and gave me two $20.00 and one $10.00. I took the money and put it in my pocket. He went South on Western. I went into the Service Station and I got change for the $10.00 and I got a pack of cigarettes I'm not sure what time I was at the service station but I was back at my house at 11:30 P.M. I came back the same route I went.

Andy was still at my house when I got back. The kitchen light was on and he was watching T.V. when I got back. He ask me "How did it go?" I told him "allright I only got $50.00 for it." He said "Shit do you know how much that cost?" I told him $50.00 is better than nothing." So I gave him $25.00. I gave him a twenty and a five.

He still had on the same shirt and pants. I don't know if he had on shoes. He ask me if I had a gas can. I went and got him one. He ask me if he could borrow my car. I ask him "Did you run out of gas?" and he said "I'll get it, I'll get it." He left about 11:45 P.M. in my car. He said he wouldn't be long. He took the gas can with white letters.

I don't remember what the white letters said. Maybe Ovaline.

I had approx. ½ a tank of gas in my car when I got back from the city. There was no gas in the can that I gave Andy.

Andy got into my car and left about 11:45 or 11:50 P.M. He said he wouldn't be long. He said he would be right back. I sat down and watched T.V. for awhile. I was worried he wouldn't bring my car back. I finally went to bed about 1:30 A.M. 2-3-73. I didn't go to sleep right away.

When I got up the next morning at about 6:45 A.M. 2-3-73 my car was parked where I allways parked on the North side of my house on Virginia Street. I went out and looked at the car. It had mud on the fender on the windshield on the sides of the tires. It was red colichic mud. There was grass and mud underneath the car. There was mud in the floor board on the gas pedal. There was no mud on Passenger side or in the rear seat. There was no blood on the floor board of the car. There was blood on the rear bumper of the car on the right side and there was blood below the bumper on the right side.

I don't know if the blood was on the car when he took it at 11:45 P.M. 2-2-73 but the mud was not on the car at that time. I took my car to the car wash. I noticed it only had about ⅛ of a tank of gas at that time. Knowing the car like I do I would judge he had driven at least a hundred miles or more from the time I loaned him the car until he brought it back and parked it.

I took the car to the car wash across the street from the A & W on 4th Street. I begin washing it off. There was a guy in a redish colored pickup pulled up beside me when I was washing it. (Trunk)

When I was washing the car off I noticed there was blood in the trunk. There was blood on the spare tire, there

was blood beneath the rear deck lid, there was blood on the left side of the trunk. There was blood or spots of blood on the rear lights inside. The blood was on the 15" spare tire. I have two spare tires. My snow chains were missing. My Jack handle was missing. The gasoline can was not there. The trunk mat was missing. The rubber stoppers (gourmet) that go into the holes in the bottom of the trunk were missing. The back of the car looked like somebody had dumped a bucket of water in it and had rubbed it with their hand. It looked like a feeble attempt to wash it out in the dark. I went ahead and washed the turtle back out. I put on my new tag. I had bought the tag Jan. 16, 73 but I hadn't changed the tag until then. I changed it so that if anyone had got my tag number. I still have the old tag at home.

I'm sure all the items were in the car before I loaned it to Andy. My car was not as dirty before I loaned it to him. I have had the car since Jan. 16. I bought it from Mel Ashley in Okla. City. He is at 1021 S/W 52nd Street, Okla. City. There was no blood in or around the car before 2-2-73.

I didn't wash underneath my car. There was and still is mud all underneath it.

I actually put the new tag on my car at home. I didn't have a screwdriver with me at the car wash.

I left the car wash and went back home. Andy's Tennis shoes that were stuck under the front seat passenger side I took into my house. I put them in my bedroom where they are now. I saw the shoes I had loaned him in the hall between the kitchen and the living room. I put them in the bedroom closet.

I cleaned up the house. Later about 10 A.M. I went over to Kenneth Hurst house and I visited Kenneth & his wife. I loaned Gary Henry a speaker out of my car. They mentioned that my car was real nice and clean. That was the first time I had washed my car since I owned it. I begin getting the feeling there that I was being watched about

then. Gary Henry and Brenda Henry were there. They decided to go over to Gary's house and listen to a new album. I decided not to go so I went back home. I later went to Steve Hinton house and stayed a while and later I came some and stayed all night. I hardly slept any.

The next day Rod Rimm called me and told me Edna Shaw was missing. He said some of relation worked in county clerks office and he had learned that a woman was missing. That they had found blood in the kitchen and in the driveway. He ask me if I was in on it. He ask me clear if I done it. I said no.

I got pretty shook-up then. I was in a spot. I ask myself "what should I do, should I wait for them to come and interrogate me? Should I go down to the Police station and confess. I actually ask Rod if I should go to the Police Station and tell them what I know. He said they will be in touch with you.

I kinda waited around kinda hoping you all would come. The Police contacted me about 10 A.M. today. They treated me fairly and courteous at all times. They put it to me in a more polite manner than I expected. The Police have never threatened nor mistreated me in anyway. They have been very considerate. They have not promised me anything in return for making this statement. Before I made this statement I was advised of my right by Ernest Lovett, Frank Brady, Danny Wheeler and James Turner. I fully understand and understood what my rights were. I also signed waiver of my rights. I signed a waiver of search of my house and of my car.

I have read the above statement containing 14 handwritten pages. It is true and correct to the best of my memory and knowledge. I have given this Statement of my own free will without any persuasion or coersion. I have initialed

each page and I will sign it as being the sworn truth to the best of my knowledge.

/s/ George E. Fred
2-12-73
11:02 P.M.

Statement read by George E. Fred and signed 11:02 P.M. 2-12-73.

/s/ James Turner
/s/ Ernest L. Lovett, OSBI
/s/ Danny L. Wheeler Detective Chickasha P.D.
/s/ Bob Sneed Chickasha Police Dept.

EXHIBIT 38*

[Appended to the Opinion]

George Edward Fred
1602 South 17th Chickasha 222-0384

Re: Edna Shaw

J. Turner E. Lovett, D. Wheeler. 7:53 P.M. 2-13-73 at S.O. Chickasha.

/s/ G. E. Fred

I have just returned to the Grady county jail. I have been with Ernest Lovett, Danny Wheeler and James Turner to a point approx. ½ mile south of hiway 37 on a dirt road. I showed the officers the remains of Edna Shaw.

I knew where she was because last Feb. 2, 1973 a negro man by the name of Andy Sites and I hauled her and I saw Andy drag her body out of the back of my 67 white 2 Dr. H.T. Dodge Coronet. He drug her from the Trunk of the car to a point about 50 feet West of the dirt road. He came back to the car and got a Tin can; a Five gallon can of gasoline. The Gasoline was in the front seat of the car. He got

* The name "G.E. Fred" and all initials, omitted.

a lug wrench out of the front seat. He took the Gas can and the lug wrench to where he had drug the body of Mrs. Shaw. I didn't see him pour gasoline on her but I saw the flames when he lit the fire.

I first met Andy at 81 Pawn Shop on South 4th Street here in Chickasha. I later made a deal with him to sell him a 38 Special I had borrowed from Rod Rinn. I met him Jan. 29, 1973.

I met Andy Sites again on Feb. the 1st 73. At this time he and I made plans to steal a T.V. from Edna Shaw who lived at 1209 Colo. here in Chickasha. I knew she had the Color T.V. because I had formerly lived at the same address in the North apartment. She lived in the South apartment. I have visited with her in the apartment. I had seen the Color T.V. then.

I didn't tell him where Mrs. Shaw lived on the First of Feb. 73. I met him about 9 PM. Feb. 2nd 73 at the Corner near the Chickasha hotel. I had been at the Green Parrott from about 7 P.M. to near 9 P.M. I had lost $15.00 playing Pool there. I also left my dark green marine cap there that night I picked Andy up in my car. We drove up to near Edna Shaws house.

I told him "This shouldn't be too hard. She knows me." I was to go in and take her into the bedroom and entertain her. He was to stay hid until I got in and he was to slip in and get the T.V. I was to leave the back door open for him.

I drove down Choctaw turned south down 12th across Chickasha and Kansas Ave into Colorado. I pulled into 1209 driveway which is on the East Side of the house. I pulled up near the rear (South) door of Mrs. Shaws apartment. The rear of my car was about even with back door of her hourse. About four or five steps from the back steps. Andy layed down in the front seat of the car. I got out and left the keys in the ignition. I went to the South door.

I knocked on the front door. It was locked. She came to the door and motioned for me to come around to the back. She came to the back door and let me in. The front door had a padlock on it.

She said "long time no see." I said "yeah" she said "where you been?" I think. She said "how you been?" I said "o.k." She ask me if I had been working. She told me James Lewis was gone to cash a check and would be back about 9:30. This was about 10 or 12 minutes after 9 P.M. I knew I just had a very few minutes before James was back. You see I knew James stayed there, that was part of the plan. He knew me and if he came in and I was there he wouldn't think nothing of it.

She told me "The puppies you gave me, I gave to the pound." I said "That was nice."

There was some cold beans in a pan on the kitchen table. There was some plates that were dirty on the table like her and James had just eaten. There was a pint bottle of Sunny Brook whiskey on the table it had about 2 or 2½ inches of whiskey in it.

I had to go to the bathroom. When I came out she was in the bedroom. She had the whiskey bottle in her hand. I said Edna "how long has it been since you got a little?" I ask her this because she had kinda propersitioned me once. She said "been quite a while; not lately." She said "how about you?" Have you got married?" I said "Naw" she said "well you haven't had any a long time either." I said "yeah, its been quite awhile."

She sat down on the bed beside me. I had sat down while we were talking. She still had the Sunny Brook in her hand. I put my arm around her. I ask her something about "how you been feeling?" she snuggled up almost on my lap.

About this time I heard this noise in the kitchen. Edna ran out through the Bedroom door with the Pint still in her

hand. She ran through the living room. The lights were on in the bedroom and the living room. There were no lights on in the kitchen. She ran into the kitchen. I heard 3 or 4 quick thuds. Then I heard a thud like somebody was falling down or something.

I walked into the kitchen. I turned on the light on. She was laying in the floor her head was pointed south toward and behind the door. The door was about ¾ open. Her feet were laying by the refrigerator. The Front legs of the T.V. were out the door and the screen was partly open. The rest of the T.V. was still inside the kitchen. Andy was just to the right of the T.V. this would have been on the West side of the T.V. The Face of the T.V. was to the West. The jack handle lug wrench was laying on the table. He must have got it out of the turtle back of the car after I got out because it had been in the turtle back. I knew it was my lug wrench because I had used it before.

I heard her gurgling. Blood was coming out of her mouth and her nose. I tried to help him get the T.V. out. I pushed the door into her body, pushing her out of the way so we could get the door open and get the T.V. on out.

Her glasses were laying beside her head. She was laying on her right side kinda. The glasses were laying kinda in front of her face. We got the T.V. out and tried to put into the back seat but I ripped a hole in the back with the legs.

We put it into the front seat as best we could and the right front door wouldn't shut. I ran around the car and got into the car and turned the ignition on. This is when I missed Andy. He was dragging her by her feet down the front steps. Her hair was leaving bloody streaks on the steps. He was having a lot of trouble loading her. She was so limber she was slipping down out of his grasp. I grabbed her feet and we both shoved her into the turtle back of the car.

I got into the car and started to take off again and I went to looking for Andy. I saw him coming out the Kitchen

door with the lug wrench. He got in from the Passenger side of the car—he shoved the T.V. forward and crawled in.

Andy must of turned the Kitchen light off. He didn't even shut the inside door (wooden door). I drove to the alley with my lights off. I turned left (East) toward 12th Street. There was an old Chevy Pick-up parked in the alley. I scraped the right side of my car on the pick-up getting past. I didn't turn on my lights until I got onto 12th Street.

Andy and I talked about what he had done for a color T.V. He said "It's Done, you helped me put her in the trunk didn't you?" I didn't answer him cause I did.

I drove to my house. We both got out and went into my house. I Parked on the North side on Virginia Street. I didn't have any blood on me so I kept on what I had on. He had on a pair of shoes of my. He said are you going to get rid of that tonight. I said yeah I'll get rid of it.

Andy had blood on his shirt and streaks of blood on his pants. I later saw blood on the floor of my house.

I left my house and drove to Ron Rinn and borrowed five dollars. I told him I had a stolen T.V. He helped me move it from the front to the back seat. We unscrewed the legs to get it into the back seat.

I drove to Okla. City. I went to Mel Ashley's house at 1021 S.W. 52nd Street. I tried to sell him the T.V. I told him it was ripped off about an hour ago. He said he didn't want nothing to do with it if it was hot. I told him I had had some trouble. Andy had to hit somebody on the head. I told him somebody else was with me. He would not let me even leave the T.V. there.

I left his house and stopped at a service station on Southwestern. I had called Mike Johnson from Mel's house. I was at the service station 5 or 7 minutes after I got there. It was a Kerr McGee Service Station. He pulled up in a 70 or 71 Fastback Mustang; Dark blue in color (73 tag). He

ask me if I was Freddie. I told him I was and that I knew Phillip. (The guy who told me about Mike buying hot stuff). He looked at the T.V. and ask me if it worked. I told him "yeah it is just been ripped off." He ask me how much I wanted for it and I told him a hundred bucks and he said he would give me fifty.

I didn't want to take a stolen T.V. back to Chickasha so I sold it to him for fifty bucks. He paid me with two twenties and a ten. I drove to the next ser. station South of there and got change for the $10.00 bill. I got a package of cigarettes and a coke. The attendant was busy and I had to wait about 10 minutes.

I left and came back to Chickasha on the Turnpike like I went up. I got back home about 11:40 or 11:45 P.M. Andy was still there at my house watching T.V. He still had on my shoes. His Tennis shoes were still in my car.

I gave him $25.00, he said "Damn do you know how much one of those cost new" and I said well don't you know how we got it. He said we have got to do something with what we have got in the Trunk. He ask me if I had a gas can. I had a big 5 gal. can that was painted blue and had white lettering on it. It said "Ovaline" on it. I got the can. We put it in the front seat of the car and left. I drove to the gas station, Tally Wag 71 (12:00 A.M.) on 8th and Choctaw. I got out and went inside and gave the lady a $1.00 for Ethyl gasoline. I went back to the Pump and ran a dollars worth of gas in the 5 gal. can. Put the can in the front seat beside Andy and the lug wrench. I drove West on hiway 81 over the overpass and turned North on 81 up by Minco. I turned West on 152 and back North on hiway 37. I turned off hiway 37 like I told you before on the dirt road and drove down into a low place near some trees.

Andy had wanted to go to Anadarko because he knew a real good place to get rid of the body. I told him I wanted to go up the other side of Minco because I had worked on a

rig up there. I saw the sign to rig 53 this afternoon; that was the rig I used to work on.

When we got to the spot I showed you this afternoon he said stop. I did. He said turn your head lights where I can see in there. He pointed West. He said turn on your bright lights. I did. He got out, he got the car keys and he lifted up the turtle deck. He dragged her body over into the brush. He came back and got the gas can and the lug wrench. I didn't see him lay her on the stump. He told me later he did. I saw the flames. I couldn't see even in the flames. I couldn't see him for the bushes. He must of poured the whole dollars worth of gasoline on her.

He came back without the gas can or the lug wrench. He drove back to Chickasha. I was too shocked to even talk. He stopped by a bridge; the 1st or 2nd bridge after we got back on hiway 37. He threw away some rags the trunk floor mat and an old piece of newspaper. Maybe the coat he was wearing. This was approx. 2:30 P.M. I drove from there on in. Went back to my house. We both drank a can of beer. He ask me if I would give him a ride and I took him back to the Chickasha hotel. He said he had to talk to Lou Boudreau. I dropped him off at the hotel about 3 A.M. on 2-3-73 (Sat. morning). That's the last time I saw Andy. I went home. I cleaned the car out and washed it the next morning.

Yesterday 2-12-73 at 7:25 P.M. I gave a statement to you. Some of the things I said in it are not true. This statement is correct. I have attempted to clear up certain things such as I was in the house with Andy. I did help to steal the T.V. and I did help load Edna Shaw into my car and hauled her to where Andy unloaded her and set her body on fire. I made this statement of my own free will. I have at no time been mistreated nor pressured in anyway. I knew I could have a lawyer anytime I ask for one. I have not been promised anything in return for making this statement. I have been repeatedly advised of my rights and have

signed Waivers of my rights before making this statement. I have read the handwritten pages of this statement.

/s/ George Fred 10:35 P.M.
Feb. 13-73

APPENDIX "B"

FILED
In Court of Criminal Appeals
of the State of Oklahoma
FEB 18 1975
Ross N. Lillard, Jr., Clerk

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

GEORGE EDWARD FRED,	)	
	)	
Appellant,	)	
-vs-	)	No. F-74-263
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

ORDER DENYING PETITION FOR REHEARING AND DIRECTING THE ISSUANCE OF MANDATE

After having carefully considered the Appellant's Petition for Rehearing in the above styled and numbered cause, and being fully advised in the premises, the Court finds that the same should be, and the same is hereby, DENIED.

The Court further finds that Mandate should be issued FORTHWITH.

IT IS SO ORDERED.

WITNESS OUR HANDS, and the Seal of this Court, this 18th day of February, 1975.

s/ Tom Brett
TOM BRETT, PRESIDING JUDGE
s/ Mel J. Busse
MEL J. BUSSE, JUDGE
s/ C. F. Bliss, Jr.
C. F. BLISS, JR., JUDGE

ATTEST:
s/ Ross N. Lillard, Jr.
CLERK

APPENDIX "C"

FILED
In District Court
Grady County, Oklahoma
SEP 27 1973
ELSIE STUCKWISH, Court Clerk
By Johnny L. Shaffer,
Deputy

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
-vs-	)	No. CRF-73-16
	)	
GEORGE EDWARD FRED,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS

Comes now the defendant and moves the Court to suppress and exclude from consideration by the jury, at the

trial of this cause, the following items of evidence, including alleged confessions, admissions against interest or statements attributable to or given by the defendant, for the reasons hereinafter set forth, to wit:

1. Any and all evidence obtained from searches of defendant's home at 1602 South 17th Street, Chickasha, Oklahoma, conducted on the 12th day of February, 1973, including, but not limited, to the following specific State's Exhibits introduced at preliminary hearing of this cause, as follows, to wit:

> State's Exhibit 46, being a consent to search, dated February 12, 1973, at 12:40 P.M., executed at Alexander's Restaurant;
>
> State's Exhibit 60, being one white shirt;
>
> State's Exhibit 61, being one orange shirt; and
>
> State's Exhibit 62, being one pair of tan shoes;

that said exhibits and evidence should be suppressed for the reason and upon the grounds that the same were obtained by reason of unreasonable search and seizure conducted without a warrant and without a valid waiver of defendant's rights under the Constitution of the State of Oklahoma, Article II, Section 30 and 21 and the Fourth, Fifth and Sixth Amendments of the Constitution of the United States.

2. Any and all evidence obtained from searches of defendant's automobile conducted on the 12th day of February, 1973, including, but not limited, to State's Exhibits numbered 63, being an evidence envelope containing State's Exhibit 64 and State's Exhibit 64, being a tube of muffler cement, for the reason and upon the grounds that said search or searches were conducted without a search warrant and in violation of the defendant's constitutional rights, as set forth in paragraph "1" above.

3. Any and all evidence obtained from search of defendant's automobile at its place of storage on the 14th day

of February, 1973, including, but not limited, to the following specific State's Exhibit numbers introduced at preliminary hearing, to wit:

> State's Exhibit 23 and 24, the same being photographs of defendant's automobile;
>
> State's Exhibit 66, a portion of floor mat found in the trunk of defendant's automobile;
>
> State's Exhibit 67, being a liquid sample from the trunk of defendant's automobile;
>
> State's Exhibit 76, being a photograph of mat found in trunk of defendant's automobile;
>
> State's Exhibit 27, photograph of interior of defendant's automobile;
>
> State's Exhibit 28, photograph of interior of trunk of defendant's automobile;
>
> State's Exhibit 75, photograph of two pieces of trunk mat, a portion of which was taken from trunk of defendant's automobile;

for the reason and upon the grounds that said search was conducted without a search warrant and without a valid waiver of defendant's constitutional rights, as set forth in paragraph "1" above.

4. Any and all alleged statements, confessions or admissions against interest given by or attributed to defendant and made to any law enforcement personnel on the 12th day of February, 1973, including, but not limited, to the following specific items, to wit:

> (a) Statement or statements made to officers at the offices of the Oklahoma State Bureau of Investigation, Oklahoma City and later reduced to writing and introduced into evidence at defendant's preliminary hearing as State's Exhibit 48;
>
> (b) State's Exhibit 48;

(c) State's Exhibit 46, being a consent to search executed February 12, 1973, at 12:40 P.M., at Alexander's Restaurant;

(d) State's Exhibit 45, being a right's waiver taken February 12, 1973, at 11:32 A.M.;

(e) State's Exhibit 49, being a consent to search executed at 11:45 P.M., February 12, 1973;

(f) State's Exhibit 47, being a right's waiver signed at 7:23 P.M., February 12, 1973;

(g) State's Exhibit 51, being a color TV obtained from Bob Thompson, including any evidence obtained through or from Bob Thompson;

(h) State's Exhibit 77, being wood chips taken from State's Exhibit 51;

(i) State's Exhibit 55, being a hat taken from the Green Parrott.

Defendant alleges that all of the aforesaid statements, admissions or confessions taken from him on the 12th day of February, 1973, are inadmissible against him; and all evidence obtained or discovered by reason of said statements is inadmissible against defendant, for the reason that said statements were taken in violation of the following:

(a) Said statements were involuntary and taken from defendant in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article II, Section 21 of the Oklahoma Constitution;

(b) That said statements, admissions or confessions were taken without first obtaining a valid waiver of defendant's aforesaid constitutional rights, as required by *Miranda* v. *Arizona*, 384 US 436, 16 L ed 2d 694, 84 S Ct 1602;

(c) That said defendant was taken into custody at approximately 11:30 A.M., on the 12th day of February, 1973, and held without charge or arraignment until the 15th day of February, 1973: that the same constitutes an unreasonable delay rendering evidence obtained from interrogation of defendant during such period of time inadmissible against him;

(d) That said statements were taken in violation of defendant's right to the assistance of counsel in violation of the Sixth Amendment of the United States Constitution and *Miranda* v. *Arizona*, above cited.

5. Any and all statements made by defendant to any law enforcement personnel on the 13th day of February, 1973, including, but not limited, to the following specific items, to wit:

State's Exhibit 52, being an alleged statement, dated February 13, 1973, taken at 7:53 P.M., and any prior or subsequent oral statements made to law enforcement personnel;

State's Exhibit 54, being a photograph of a human body alleged to be that of Edna Shaw, including all other photographs of said body;

State's Exhibit 65, being a green jacket found at Boggy Creek;

State's Exhibit 38, being a photograph taken at Boggy Creek;

State's Exhibit 50, being a hand written waiver, signed 4:15 P.M., on February 13, 1973, agreeing to show officers location of Shaw body;

State's Exhibit 51, being a right's waiver allegedly signed at Sheriff's office on February 13 after return from scene of body;

State's Exhibit 42, being a diagram of directions to *the scene where body discovered;*

State's Exhibit 44, being a diagram of head of body made by Dr. Chapman;

State's Exhibit 69, being a copy of a newspaper found at Boggy Creek;

State's Exhibit 38, being a photo of Boggy Creek;

State's Exhibit 70, being a piece of lining material found at Boggy Creek;

State's Exhibit 71, alleged to be blood obtained from Exhibit 70;

State's Exhibit 72, rag and aluminum foil found at Boggy Creek;

State's Exhibit 76, being a photograph of mat found at Boggy Creek and mat taken from trunk of defendant's automobile;

State's Exhibit 36, being a photograph taken at Boggy Creek;

State's Exhibit 37, being a photograph taken at Boggy Creek purportedly showing mat or lining material identified as State's Exhibit 70;

State's Exhibit 38, being a photograph of green jacket found at Boggy Creek.

Defendant alleges that all of the above items of physical evidence were obtained or discovered as a result of the alleged statements, admissions or confessions taken from the defendant on the 13th day of February, 1973: that all of said specific items of evidence, and any and all other evidence obtained as a result of the statements, confessions or admissions of the defendant; as well as said statements, admissions or confessions themselves are inadmissible against defendant and should be suppressed and excluded from con-

sideration by the jury in the trial of this cause, for the reason that the same were taken in violation of defendant's rights, as follows:

(a) Said statements were involuntary and taken from defendant in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article II, Section 21 of the Oklahoma Constitution;

(b) That said statements, admissions or confessions were taken without first obtaining a valid waiver of defendant's aforesaid constitutional rights, as required by *Miranda* v. *Arizona*, 384 US 436, 16 L ed 2d 694, 84 S Ct 1602;

(c) That said defendant was taken into custody at approximately 11:30 A.M., on the 12th day of February, 1973, and held without charge or arraignment until the 15th day of February, 1973; that the same constitutes an unreasonable delay rendering evidence obtained from interrogation of defendant during such period of time inadmissible against him;

(d) That said statements were taken in violation of defendant's right to the assistance of counsel in violation of the Sixth Amendment of the United States Constitution and *Miranda* v. *Arizona*, above cited.

6. Defendant further specifically states that the identity of the alleged victim, Edna Shaw, the discovery of her body, as well as the fact of her death were obtained by the law enforcement agencies solely by reason of statements taken from defendant after approximately 3:00 P.M., on the 13th day of February, 1973. That any and all evidence concerning the discovery of the body, the identity of the same or the fact of death of Edna Shaw should be excluded from

the jury, for the reasons set forth in the last above numbered paragraph.

PARK, NELSON & CAYWOOD
By Kerry W. Caywood
Attorneys for Defendant

I, Kerry W. Caywood, do hereby certify that I did on the 27th day of September, 1973, deliver a true and correct copy of the within Motion to Suppress to the District Attorney's office at the Grady County Courthouse, Chickasha, Oklahoma.

s/ Kerry W. Caywood

FILED
In District Court
Grady County, Oklahoma
OCT 2 1973
ELSIE STUCKWISH, Court Clerk
By Patricia Crawford,
Deputy

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
-vs-	)	No. CRF-73-16
	)	
GEORGE EDWARD FRED,	)	
	)	
Defendant.	)	

MOTION TO QUASH INFORMATION

Comes now the defendant and moves the Court to quash and set aside the information filed in this cause, for the reason that the same is not presented or filed as prescribed by the Statutes of the State of Oklahoma, and in support thereof states as follows:

1. That no competent and/or admissible evidence was introduced at the preliminary hearing of this cause. That evidence admitted at the preliminary hearing was illegally obtained as set forth in defendant's motion to suppress heretofore filed.

2. That this defendant was taken into custody at approximately 11:30 A.M. February 12, 1973 and was not taken before an examining magistrate until the afternoon of February 15, 1973. That the delay in taking defendant before a magistrate was unreasonable, resulting in prejudice to defendant.

PARK, NELSON & CAYWOOD
By Kerry W. Caywood
Attorneys for Defendant

I, Kerry W. Caywood, do hereby certify that I did on the 2d day of October, 1973, deliver a true and correct copy of the within Motion to Quash Information to the District Attorney's office at the Grady County Courthouse, Chickasha, Oklahoma.

Kerry W. Caywood

[Court's Ruling on Motion to Suppress and Motion to Quash].

* * * * * *

And, thereafter, and on the 29th day of October, 1973, this case came on for trial before a jury, pursuant to assignment, and before the empanelment of a jury the following proceedings were had IN CHAMBERS, with Honorable Sam M. Williams, District Judge presiding, on a further hearing in regard to defendant's Motion to Suppress and Motion to Quash; the State of Oklahoma appearing by Messrs. Joseph H. Humphrey, District Attorney of District No. 6 of Duncan, Oklahoma, and Fred Kramer, Assistant District Attorney of Grady County; the defendant, George Edward Fred, appearing in person, and being represented by his attorney, Mr. Kerry W. Caywood:

[APPENDIX]

THE COURT: This is the Fred case, Case Number CRF-73-16. This is in regard to the Motion to Suppress filed by the defendant, and this is the Court's ruling:

In regard to Paragraph 1, defendant's motion to suppress is overruled as to Paragraph 1 and exceptions allowed. The Court finds that the search was made after the defendant was fully advised of his rights under Miranda; he voluntarily and intelligently waived those rights, and voluntarily waived the right to search.

Paragraph 2 of the motion to suppress is also overruled and an exception allowed for the same reason as my ruling on Paragraph 1. In other words, one was the home and one was the car.

In regard to Paragraph 3 of the motion to suppress, as of now I am going to sustain Paragraph 3.

MR. HUMPHREY: Let's take this exhibit by exhibit. I don't have my copy.

THE COURT: Paragraph 3 had to do with the search of the automobile on the 14th of February. Here is my thinking: There was a consent to search given at eleven-something on the 12th, but the Court feels that the situation had changed. In other words, the defendant was in a different situation on the 14th than he was on the 12th. He had signed these confessions. In order for his consent to have been intelligently given he should have known the facts. For that reason I am going to sustain paragraph 3.

MR. HUMPHREY: I am trying to clarify the exhibits.
THE COURT: As I understand it, the exhibits all relate to various circumstances. All of these exhibits under Paragraph 3 were picked up on the 13th.

MR. CAYWOOD: Yes.

MR. HUMPHREY: What is the liquid sample?

MR. CAYWOOD: They scraped this off the body of the trunk.

MR. HUMPHREY: It's a blood scraping, isn't it?

MR. CAYWOOD: Yes, but I think it is referred to in the preliminary hearing as a liquid sample.

MR. HUMPHREY: I understand the Court's ruling.

THE COURT: In other words, all of the things that were taken as the result of the search of the automobile on the 14th of February was without a new consent to search and search warrant.

MR. CAYWOOD: One of these was an item talken out of the automobile, the two pieces of mat.

THE COURT: Anything that was taken out of this car without consent to search or search warrant will be sustained.

MR. CAYWOOD: These are statements on the 12th?

THE COURT: Right. Items listed under Paragraph 4 in the Motion to Suppress is overruled and an exception allowed.

The Court finds the statements referred to in this paragraph were each made after the defendant had been fully advised of his rights under Miranda; he fully understood these rights and the defendant voluntarily and intelligently waived these rights.

The Court specifically finds that during the period of February 12, 1973 from and after eleven a. m. the defendant was fully in possession of his faculties, and in all instances acted without coercion and without promise of reward. There is no instance, the Court finds, during this period where his will was overborne, and the statements were the product of a rational intellect and a free will.

As to Paragraph 5 in the Motion to Suppress, Paragraph 5 is overruled and an exception allowed.

The Court finds that the statements, admissions and confessions referred to in Paragraph 5 of defendant's Motion to Suppress, and defendant's acts in connection therewith were each made and done after the defendant had been fully advised of his rights under Miranda; that he fully understood these rights, and he voluntarily and intelligently waived them; that all such statements, confessions and acts were voluntarily and intelligently made or done; that none of them were given or done at a time when the defendant's will was overborne, and each was a product of a rational intellect and a free will.

The Court specifically finds that there was no withdrawal of drugs affecting the defendant when these acts, statements, admissions and confessions on February 13, 1973 were done sufficient to overbear the defendant's will, and that the Valium prescribed by Dr. McDougal and taken by defendant during this period did not sufficiently affect defendant's will to prevent such statements and confessions and defendant's acts from being the product of a rational intellect and a free will.

In reading these cases, there are a number of these drug cases where they have attempted to use drugs and whiskey on this point, and they seem to indicate that it goes to the weight rather than the admissibility and some of them turn on the fact of whether or not there was anything related to the truth serum involved, but as far as I can find out these drugs had nothing to do with the truth from the totality of the circumstances. This ruling is made on the totality of the circumstances.

In regard to Paragraph 6, the same ruling applies. It is overruled and an exception allowed for the same reason.

MR. CAYWOOD: May I have an exception to all of the rulings?

THE COURT: You may have an exception. * * *

* * * The defendant's motion to quash the Information is overruled and an exception allowed. * * *

* * * * * *

(And, thereafter, and on the 30th day of October, 1973, before the empanelment of the Jury was resumed, the following record was made IN CHAMBERS, Honorable Sam M. Williams, District Judge, presiding, Messrs. Humphrey and Kramer representing the State of Oklahoma, and Mr. Kerry W. Caywood representing the defendant:) THE COURT: On the previous ruling of the Court on the MOTION TO SUPPRESS, I am going to make an amendment to my ruling.

I suppressed everything under that Paragraph 3, but in checking into the actual exhibits I find there are two exhibits, State's Exhibit #23 and State's Exhibit #24 of the preliminary hearing that were merely pictures of the outside of the vehicle and was not a search on the inside, so I am going to amend it to overrule the MOTION TO SUPPRESS insofar as these two pictures of the vehicle taken from the outside.

MR. CAYWOOD: Exception.

THE COURT: Exception is allowed.

Is there anything else we need to take up now?

(THIS CONCLUDED IN CHAMBERS PROCEEDINGS ON MOTION TO SUPPRESS.)

APPENDIX "D"

[Ruling on Jackson v. Deno]

* * * Now, in regard to Number #33, which is another Miranda warning given at 7:23 p.m., and #34, which is a statement given by the defendant on the evening of the twelfth, the Court finds that prior to making that statement

on the evening of the twelfth that the defendant was fully advised of his rights under Miranda, as stated in the waiver, that he fully understood them, and that he voluntarily and intelligently waived them, and the Court finds that at that time in connection with the statements that were made on that evening, that all during this period from February 12th, 1973 from 11:30 a. m., for the rest of that day—that is the first day—and includes this Miranda waiver, which is #33, and the statement #34, that the defendant was in full possession of his faculties at all times, that he fully understood what he said and what he did, in all instances acted voluntarily and without coercion or promise of reward; that in no instance was his will overborne, and that the statement given on the night or evening of February 12th was a product of a rational intellect and of a free will.

Now, on the afternoon, the next one is #36, which is the handwritten one by Mr. Turner, given, I think, about 4:15—let me see that—this is a statement handwritten by Mr. Turner and was signed by George Fred at 4:15 on February 13th. Now, this was after the doctor had been called at about three o'clock that afternoon. Of course, that morning the defendant was taken to the hospital about seven o'clock, if I remember correctly, and had been examined in the emergency room out at the hospital by Dr. Harrison, and we had Dr. Harrison's testimony as to his condition indicating no symptoms as far as withdrawal was concerned. Then that afternoon, because of his nervous condition of the defendant, Dr. McDougal was called and Dr. McDougal evidently examined him and prescribed this Valium. Now, the first two tablets of Valium, which was ten milligrams each, as I remember, was taken by the defendant at about 3:40 that afternoon, is that correct?

MR. HUMPHREY: Yes. About 3:40.

THE COURT: The doctor was there about three o'clock, and they had to get the prescription filled, and they brought it back, and he had taken a total of twenty milligrams of

Valium, so this statement at 4:15 was about thirty or thirty-five minutes later after he had taken the Valium. One of the questions is whether or not the Valium was sufficient to cause this statement to be inadmissible.

The Court, in considering all the evidence, there was a lot of testimony given by various individuals who were present during this time, observed the defendant, talked with him, and there are a number of things the defendant himself did; drew the chart, the route to the location northwest of town and so on.

In considering all this evidence, the Court, and in regard to this statement made and granting this right, to tell them he would lead them up there, the Court finds that the defendant was fully advised of his rights under Miranda prior to this Exhibit #36, and including Exhibit #36; that he fully understood those rights, and that he voluntarily and intelligently waived these rights prior to agreeing to go show them where this body was; that such statements were voluntarily and intelligently made, and the acts that he performed in accordance therewith were voluntarily and intelligently done; that none of them was given or done at a time when the defendant's will was overborne, and that each was the product of a rational intellect and a free will. In regard to these items, the Court specifically finds that there was no withdrawal from drugs affecting the defendant during this period sufficient to overbear the defendant's will. We have a number of doctors' statements. The doctor from the hospital at Norman indicated if he had been in withdrawal it would have shown up on the 15th when he was over there, and the Court finds that the Valium prescribed by Dr. McDougal and taken by the defendant at this time, during this period, shortly before this, did not sufficiently affect the defendant's mental processes to cause his will to be overborne or to prevent his subsequent statements, actions or admissions and acts from being the product of a rational intellect and a free will. Now, that is in regard to Exhibit Number #36.

Now, in regard to Exhibits #37 and #38. This involves another Miranda warning given at 7:50 on the night of February 13th. This is after the defendant had been up to the southwest corner of Canadian County; at about 6:20 on the way back he took two more Valium tablets. It might have been 6:10. It was shortly after six o'clock; he took two more of these ten milligram Valium tablets, and then they stopped out at George's Steak House, at which time there the defendant had eaten a regular meal of ribs. After they finished eating out there, then they came down to the Sheriff's office and that is when this #37 and #38 was done. Now, again, we have all the statements of the officers of the defendant's actions, we have the statements of the doctors who stated that if he had been under withdrawal it would have shown up on the 16th when they examined him on the morning of the 16th. There is no evidence that I could find of any withdrawal as such, other than certain statements made by the defendant himself. Dr. Harrison had examined him on the morning of the 13th out at the hospital and he didn't see any evidence, any symptoms of it. He admitted that he didn't know what the symptoms were but when asked the specific symptoms that the other doctors had stated were symptoms, he said that he didn't notice any. So, in regard to these last two items, again, the Court finds to the Court's satisfaction that the defendant had been fully advised of his rights under Miranda, in Exhibit #37; that he fully understood his rights under Miranda; that he voluntarily and intelligently waived his rights prior to making the statement.

In regard to the statement Number #38, it is the Court's conclusion that it was voluntarily and intelligently made; that it was not given at a time when defendant's will was overborne, and it was a product of a rational intellect and a free will.

The Court specifically finds in regard to these two exhibits that there was no withdrawal from drugs affecting the defendant during this period that was sufficient to over-

bear the defendant's will; that the Valium prescribed by Dr. McDougal and taken by the defendant during this period—now, this made a total of four of those tablets, two of them at three-forty and two at six-ten—spaced during all of this period of activity—did not sufficiently affect the defendant's mental processes to cause his will to be overborne or to prevent such statement and this waiver of his Constitutional rights under Miranda being the acts and product of a rational intellect and a free will, and the Court finds that they were voluntarily and intelligently made.

Now, let's get to this polygraph business.

MR. CAYWOOD: Your Honor, before we do that, are there other oral statements, now, that the prosecution has introduced in evidence; there have been a number scattered throughout the record that have not been introduced?

THE COURT: It is the Court's opinion, now, in regard to this entire period—take the twelfth, and I think that I made that statement previously in my statement—that during this period from 11:30 a. m. on February 12th, 1973, of course the Court makes the finding that during that period up until midnight that night he was in full possession of his faculties, and so on, but, now, do you have any specific statements as to time that the Court should rule on?

MR. CAYWOOD: On the twelfth?

THE COURT: Yes, during this period on the twelfth. I would particularly need to know the time in relation to a Miranda warning. Now, all I have here is the Miranda warning, which was Number #30, which was taken along around noon on the twelfth, and then the Consent to Search, and then I have this polygraph matter which was that afternoon, which we haven't taken up yet, and then I have another Miranda warning given at 7:23 on the evening of the twelfth, and then the statement.

MR. CAYWOOD: Your Honor, I will say this: We object to the Court to any statements, regardless of when they were given. Now, I don't know what statements the prosecution intends to produce. We just got through hearing a long statement given by Frank Brady.

THE COURT: This same statement was also given by another witness, wasn't it, by Lovett, which was in the preliminary hearing.

MR. CAYWOOD: Now, I don't know whether Mr. Humphrey is going to ask Mr. Lovett to come in here and give his statement and then ask Mr. Brady to come in and give a statement, and then somebody else come in and give a statement to us. I don't know. However many times he wants to get it in, I want to object to it because it was taken under circumstances inherently coercive.

THE COURT: You are talking about this polygraph?

MR. CAYWOOD: Yes. This is the statement that was later reduced to writing on the evening of the twelfth. If you pick up State's Exhibit Number #34, the handwritten statement that Junior Turner wrote out on the evening of the twelfth, all in the world it is is reducing his statement to writing.

MR. HUMPHREY: Was it that man who spoke, or was it Mr. Turner? He gave it to him and he wrote it down at that time as he gave it to him at that time of day. Mr. Turner wasn't even up there in Oklahoma City.

THE COURT: In other words, it is a repeating of the same statement?

MR. HUMPHREY: It is a repeating of the same statement by this individual to another individual at a later date, at another time.

MR. CAYWOOD: I am sure that Mr. Brady was refreshing his memory by reading that statement.

MR. HUMPHREY: Can you prove it? Can you prove it?

THE COURT: Gentlemen, it is now 12:30; 12:35 as a matter of fact. I know the Reporter needs to go home and eat lunch, and so do I. The only thing that I know to do is to thresh this out after we get back from lunch. I do want to hear some argument from counsel on this polygraph item.

MR. CAYWOOD: What time do you want us, Your Honor?

THE COURT: I want to try to be back by 1:15. I don't know whether I will make it or not.

(And, after the noon recess, and at 1:15 o'clock p. m., all parties appearing in the courtroom as before, the following proceedings were had and record was made:)

THE COURT: Let the record show the defendant is present in court with counsel. This is a continuation of the hearing outside the presence of the Jury.

I believe we had resolved everything on this Jackson-Deno hearing except this polygraph matter. Is that correct?

MR. HUMPHREY: Well, the information occurred at that time. I don't believe it is a polygraph matter.

THE COURT: It has to do with the warning.

MR. HUMPHREY: Yes.

THE COURT: How does counsel for the defendant contend that it is not proper to admit this? This Exhibit #32, along with the statement that was made to the examiner.

MR. CAYWOOD: If the Court please, the exhibit itself, Exhibit #32, I believe it is, makes reference, of course, to the polygraph, and it is a waiver, as I understand it, or a consent to or a request to take a polygraph examination, and polygraph examinations are not admissible in a case of this sort, and I don't think it would be proper to admit any reference—

THE COURT: It is the results of the polygraph that is not evidence. In other words, the fact that the operator indicated that he was or was not telling the truth. Isn't that right?

MR. CAYWOOD: I understand that, Your Honor, but I don't believe any reference to polygraph examination should be admitted in evidence, because they are not reliable; you can't use the results, so what is the purpose then of bringing up the fact of the polygraph other than that?

THE COURT: I have got to determine whether or not two things, basically—whether or not prior to making this statement that the defendant was effectively warned of his rights under Miranda and that he understood them and waived them, in the first place, and the second thing I have got to do is to determine whether or not they were voluntary.

* * * * * *

MR. CAYWOOD: Your Honor, one of the issues that we raised before adjournment for lunch, we have discussed in this Jackson-Deno hearing the written statements that have been specifically marked and referred to, including Defendant's Exhibit #1, but as the Court is aware, at the previous hearings that have been conducted in this matter there have been a number of oral statements attributable to the defendant, statements made primarily, the ones most striking that I remember, on the 13th of February, 1973. These statements have not been reduced to writing; they have previously been requested by counsel, and the motion to produce those statements has been overruled, but they were, of course, part of my Motion to Suppress, which the Court has overruled, and we again, as these come in, we wish to object to their admissibility on the same grounds as the other statements, that they were obtained in an atmosphere that was inherently coercive, they were not voluntary, they were taken—

THE COURT: Alright. As to the oral statements which the Court is aware of, each one of those statements was given at a time subject to which the defendant had been advised fully of his Constitutional rights under Miranda. I am not saying that each time a statement was given that he was so warned, but the evidence is that the first thing that the officers did on the twelfth, when he came out into the car, was to warn him of his rights under Miranda, and I think two or three different times during the day of the twelfth the warning was given to him and in each instance he waived it, and in most instances he signed an instrument waiving it. The Court feels that he really understood it and that he waived it in each instance.

As I understand the cases, they don't require a formal warning and waiver before each statement. As a matter of fact, they don't require it each day in some of the cases. Counsel just showed me a case where a Miranda warning was given a day or so, or two days before, and the Court held that was sufficient. We have, I think, two or three given the first day, so it is the holding of this Court that on each of these statements that the defendant had been prior to that time advised fully of his rights under the Miranda decision, and in each instance he had fully understood the rights, and he knowingly and intelligently waived them, and voluntarily waived them.

Now, as to the statements themselves, I don't recall any statement that I have heard that there was any evidence that wasn't voluntary that hasn't already been covered by my ruling here.

MR. CAYWOOD: Your ruling includes those statements given on the thirteenth, as well as the twelfth?

THE COURT: Yes. In other words, you have two things. You have the alleged withdrawal, and then you have the medicine the doctor gave. The Court has

determined that neither one of those, there was nothing in either instance that was sufficient to prevent these from being intelligently and voluntary given.

MR. CAYWOOD: And your rulings, as I understand it, covers all oral statements, as well as written statements on the twelfth and thirteenth?

THE COURT: Right. Now, the evidence of each one of the officers in regard to the oral statements was that there was no evidence of any kind of coercion, or any kind of pressure, or anything to cause it to be anything other than voluntary, and unless something else comes up when this evidence goes before the Jury—in the evidence as it exists now, the Court finds each one of them was voluntarily and intelligently made.

MR. CAYWOOD: This includes all statements, oral or written?

THE COURT: That I am aware of, on the twelfth and thirteenth, right.

MR. CAYWOOD: Now, any statements that you are not aware of, or that I would not be aware of—I don't know whether there are any or not—but, if there are any additional statements that have not been previously furnished to counsel, and the Court or counsel have not been made aware of such statements, I would object to them on the basis that they have not been previously furnished to me.

THE COURT: What does the District Attorney say about that?

MR. HUMPHREY: I don't know of any. If I hear of them the first time, you are absolutely correct. They should be disallowed.

THE COURT: With that understanding, then, if they do come up and it is the first time they have been brought up, on your motion I will sustain your objection to them.

MR. CAYWOOD: Alright, Your Honor, may I inquire if the Court has, in making its determination as to the voluntary statements and confessions, considered the time element, the delay in arraignment? I think this was before the Court in my Motion to Suppress.

THE COURT: Yes. We checked the cases on that. Now, the Court has this in mind: The first charge made against this defendant was made on the thirteenth for a different offense.

MR. CAYWOOD: After he had already given all the statements.

THE COURT: Yes, but, of course, the actual charge in this murder case wasn't filed until the fifteenth.

MR. CAYWOOD: That is true.

THE COURT: —That he had been held under another charge connected with the same transaction for two days prior to that time. I understand that. I am considering that.

MR. CAYWOOD: Your Honor, aside, now, from the Jackson-Deno hearing, assuming—

THE COURT: Actually, we are down to this one thing: We are down to this statement, this oral statement made to Mr. Brady. Now, evidently it is the same statement that was made at a separate time, and is in writing. Is that correct?

MR. HUMPHREY: With one exception. I think that the statement that was given later that evening was pretty much what he oratorally gave to them after the outbursts when he inquired about the TV robbery, and he said, "You've got me," what came after that—

THE COURT: Right. Here is the way I look at it. I am not ruling on it yet, but all of the evidence indicates so far that there was nothing involuntary about it;

there was no coercion of any kind; it was all voluntary on the part of the defendant to go up and take this lie detector test. There was no evidence even of nervousness until it was called to his attention that the officers knew or had information that he had been in possession of this television set, and that Rod Rinn helped him move it. At that time he made the statement, which I heard previously in some of the other evidence, first, he admitted that he did something, and then he said, "No, I didn't but I was responsible * * *," and then he goes ahead and makes a lengthy explanation, and during all of that explanation evidently he was considerably nervous, but his nervousness didn't develop until he found out what they had.

MR. CAYWOOD: He was also subjected to questions during this subsequent time.

THE COURT: Right, right. He was also subjected to questions during this subsequent time, an hour and a half, or so. Let me ask you this: Would it be fair to the defendant to let in the first part, which there is no question in my mind that it was voluntarily made, and rule out his explanation for the simple reason that he was nervous?

MR. CAYWOOD: Your Honor, I think the statement, as I understand it, from Mr. Brady and from Mr. Lovett, is that his condition changed; his nervousness developed at that time.

THE COURT: It developed at the time when he found out that they knew about the television.

MR. CAYWOOD: Right. Now, his statement, "I killed her," I don't think—

THE COURT: That came immediately after that according to the witness.

MR. CAYWOOD: That is right.

THE COURT: That is the first thing he said after that.

MR. CAYWOOD: If the Court is talking about excluding that—

THE COURT: At that time there was no evidence of nervousness. In other words, this was his first response, and from then on he got nervous.

MR. CAYWOOD: I don't agree with that, Your Honor. I think he said that is when he became nervous.

THE COURT: That is the way I remember the testimony. That is what precipitated the nervousness.

MR. CAYWOOD: I think the whole thing is inadmissible.

THE COURT: On what basis?

MR. CAYWOOD: Your Honor, all through this thing. He had been in custody now since 11:30 that morning.

THE COURT: There is a question about that, counsel.

MR. CAYWOOD: This Frank Brady said that he was a suspect in the case; that the investigation had focused on him.

THE COURT: That was up in Oklahoma City at some three, four or five o'clock in the afternoon.

MR. CAYWOOD: It is unreasonable to say that he was not in custody when he had been with the officers continually; he had been taken to the police department and been fingerprinted and had his picture taken to see if he was involved. Now, how can you say that he was not in custody?

THE COURT: Well, I know they said they weren't sure about it. There are a lot of things there that need to be considered.

But, go ahead with your statement.

MR. CAYWOOD: Your Honor, I object to this statement, as it has been to all of these statements, that they were taken under circumstances that were inherently coercive;

that they are involuntary legally; that there is no valid waiver of his rights under the Fifth and Sixth Amendments of the Constitution as set out in Miranda versus Arizona; the delay in arraignment. They picked him up at eleven-thirty on the twelfth, and they didn't even bother to file a charge until the fifteenth.

THE COURT: No, that is not quite accurate. They filed the charge on the thirteenth.

MR. CAYWOOD: Your Honor, they filed a charge of murder on the fifteenth.

THE COURT: I understand that.

MR. CAYWOOD: They filed a charge on the thirteenth, but they didn't even issue a warrant for his arrest until the fourteenth

THE COURT: They issued the warrant on the fourteenth.

MR. CAYWOOD: And he was in jail at that time, and had been since the twelfth.

THE COURT: I understand that.

MR. CAYWOOD: But this is the basis of my whole objection. It has been the same all the way through, and I have the same objection to any statements of Mr. Brady or Mr. Lovett, if he wants to get up here and say the same thing.

THE COURT: Anything further, Counsellor?

MR. CAYWOOD: Not in regard to that.

THE COURT: Does the District Attorney have any statement to make?

MR. HUMPHREY: No, other than I personally had already distinguished the point that I think the Court has just distinguished, that if there was any question at all in my mind it would have been that that came after the outburst which was a voluntary response to his confrontation on why he

had told something differently about the TV. The testimony was the subsequent narration that he gave was a nervous condition; he didn't say he was psychologically involved, and I personally think it is all admissible, but if I had any question it would be where the Court has distinguished that particular response; I think that comment that he made when confronted, "You've got me. I killed the old lady. No, I didn't, but I am responible for her death," I think it is admissible. It was voluntary.

> THE COURT: I had already made that conclusion, Counsellor. It's the Court's decision, frankly, that going to Oklahoma City and taking this polygraph was done voluntarily by the defendant. The trip was voluntary on his part; that he had previously been advised of his Constitutional rights under Miranda, fully, that he understood those rights, and that he waived those rights, and at the time this questioning started to occur I think he was acting rationally—his mind was rational, and he was acting under his free will, and he was in full possession of his faculties, certainly up through his response when he found out what the officers knew, which is the statement, I believe he made, "I killed her. No, I didn't but I" may be "responsible," that I was "responsible"; something of that nature. Now, the rest of it from then on out is when he got extremely nervous, and if counsel wants to object to the rest of it, want the rest of it out I will sustain that.

MR. CAYWOOD: Your Honor, I will have to object to it. I cannot waive any of my client's rights.

> THE COURT: I understood after that they questioned him for about an hour and a half, and during that period of time they got information out of him and statements he made and he was highly nervous and he simply did not complete the polygraph test.

MR. CAYWOOD: Please let the record show that if the Court will do that it will be of some assistance to rule out

the balance of that, however that does not cure the entire objection.

THE COURT: I understand that. I understand that.

MR. CAYWOOD: I do not want to waive my objection.

THE COURT: I understand that, but I just want it understood that you were objecting to that part even after I let the rest of it in.

MR. CAYWOOD: Yes, Your Honor.

THE COURT: Then I will sustain you on everything after that one statement that the defendant made.

MR. HUMPHREY: This is in Oklahoma City?

THE COURT: In Oklahoma City.

MR. HUMPHREY: Your Honor, I have one request, if the Court would, in regard to this lapse of time involved, I would ask the Court to admonish defense counsel not to make any comment in his closing argument or any reference to that time with any of the officers, because if he brings that up and starts arguing about that lapse of time, I want counsel to be admonished not to make any reference to that lapse of time on his argument to the Jury, because if he does I am going to tell them what happened. If he gets up there and leaves the inference that they browbeat him, drug him to Oklahoma City and somewhere else, is what he is going to do, I want it understood that he is not to talk to them about that lapse of time.

THE COURT: Do you understand that statement in regard to that?

MR. CAYWOOD: Your Honor, I don't know what Mr. Humphrey intends to do with the time. I think we will know what we will be called on to say as the time approaches.

THE COURT: Gentlemen, the Court has made his rulings now on this Jackson-Deno hearing. and if we want

to make any ground rules, let's go In Chambers and make them so we will fully understand what we are talking about. So, let's recess for a few minutes, and counsel will come In Chambers.

APPENDIX "E"

FILED
In Court of Criminal Appeals
of the State of Oklahoma
APR 24 1974
ROSS N. LILLARD, JR., Clerk

IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

GEORGE EDWARD FRED,	)	
	)	
Plaintiff in Error,	)	
-vs-	)	No. F-74-263
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Defendant in Error.	)	

PETITION IN ERROR

Comes now the Plaintiff in Error, George Edward Fred, and for Petition in Error to the Court of Criminal Appeals of the State of Oklahoma, states as follows:

1. That this is an appeal from the District Court of Grady County, State of Oklahoma, Case No. CRF-73-16, styled State of Oklahoma vs. George Edward Fred.

2. That Plaintiff in Error was charged by information with having committed the crime of murder, and upon trial by jury in the District Court of Grady County, was found guilty of the crime of manslaughter first degree and sentenced to a term of thirty five (35) years imprisonment.

3. On the 21st day of November, 1973, judgment and sentence on conviction was imposed against Plaintiff in Error, sentencing him to a term of thirty five (35) years under the direction and control of the Department of Corrections of the State of Oklahoma for the crime of manslaughter first degree.

4. On the 21st day of November, 1973 and prior to the entry of judgment and sentence, Plaintiff in Error filed his motion for a new trial in the Trial Court, that said motion was, by the Trial Court, heard and overruled with exceptions allowed to defendant on the 21st day of November, 1973 and prior to the entry of judgment and sentence in this cause.

5. Upon judgment and sentence being entered in this cause, bail was set for the defendant in the amount of $40,000.00 and defendant is now incarcerated in the State Penitentiary at McAlester in lieu of bail.

6. Plaintiff in Error urges the following as errors of law committed during the progress of the Trial Court proceedings against Plaintiff in Error:

a. The Court erred in overruling paragraphs four, five and six of Plaintiff in Error's Motion to Suppress;

b. The Court erred in admitting into evidence at the trial of the cause, over objection, those matters sought to be excluded in paragraphs four, five and six of Plaintiff in Error's Motion to Suppress;

c. The Court erred in admitting into evidence, against Plaintiff in Error, certain statements against interest, confessions or admissions, alleged to have been made by him without having proven the corpus delicti of the crime of murder by competent evidence, independently of the confessions or statements of the defendant.

d. The Court erred in overruling the Plaintiff in Error's Motion for new trial.

7. Plaintiff in Error further alleges that on the 28th day of November, 1973 and within seven (7) days after Plaintiff in Error's Motion for New Trial was overruled by the Trial Court, Plaintiff in Error ordered a transcript of the record from the Court reporter and served on the Court reporter a Designation of Record on Appeal in this cause. That said record has been completed in part, in that the Court reporter has delivered to Plaintiff in Error a transcript of hearings held on defendant's Motion to Suppress and Motion to Quash containing 343 pages or thereabouts, and that by the reason of the press of other Court business and crowded docket of the District Court of Grady County, the reporter has been unable to complete the transcript of jury trial proceedings in this cause. Plaintiff in Error, therefore, tenders for filing with this Honorable Court, at this time, a certified copy of the original record on file in the Trial Court, and transcript of hearings had on defendant's Motion to Suppress and Motion to Quash and prays that this Court grant leave to amend the record on appeal by filing, with this Court, the complete transcript of the trial court proceedings had on Motion for New Trial, as set forth in Plaintiff in Error's Designation of Record, as soon as the same can be completed by the Court reporter. In support of Plaintiff in Error's Application for Leave to Amend the Record, Plaintiff in Error attaches hereto a letter of the Court reporter, dated April 17, 1974 and affidavit of the reporter of the same date, setting forth facts with regard to the impossibility of timely preparation of the transcript of trial proceedings.

WHEREFORE, Plaintiff in Error prays that this Honorable Court grant leave to amend the record on appeal herein to include the transcript of proceedings had at the trial of this cause before a jury and transcript of proceedings had on Hearing Motion for New Trial, as soon as such

portions of the record can be obtained from the Court reporter. Plaintiff in Error further prays that upon hearing this cause, this Court reverse the judgment and sentence of the Trial Court, set aside the conviction of this Plaintiff in Error and dismiss the charges against him.

PARK, NELSON & CAYWOOD

By .....
Counsel for Plaintiff in Error

I, Kerry W. Caywood, do hereby certify that I did on this ..... day of ....., mail a true and correct copy of the within Petition in Error to Larry Derryberry, Attorney General, State of Oklahoma, State Capitol Building, Oklahoma City, Oklahoma 73100.

.....
Counsel for Petitioner

CERTIFICATE OF MAILING

I, Kerry W. Caywood, do hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari to the Court of Criminal Appeals of the State of Oklahoma, was deposited in the United States Post Office, this 7th day of April, ~~1965~~ 1975, with first class postage prepaid, addressed to Larry Derryberry, Attorney General of the State of Oklahoma, State Capitol Building, Oklahoma City, Oklahoma 73105.

Kerry W. Caywood